



House of Commons  
Exiting the European Union  
Committee

---

# The progress of the UK's negotiations on EU withdrawal - The Withdrawal Agreement and Political Declaration

---

Tenth Report of Session 2017–19

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
to be printed 5 December 2018*

## Exiting the European Union Committee

The Exiting the European Union Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Exiting the European Union and related matters falling within the responsibilities of associated public bodies.

### Current membership

[Hilary Benn MP](#) (*Labour, Leeds Central*) (Chair)

[Mr Peter Bone MP](#) (*Conservative, Wellingborough*)

[Joanna Cherry MP](#) (*Scottish National Party, Edinburgh South West*)

[Sir Christopher Chope MP](#) (*Conservative, Christchurch*)

[Stephen Crabb MP](#) (*Conservative, Preseli Pembrokeshire*)

[Mr Jonathan Djanogly MP](#) (*Conservative, Huntingdon*)

[Richard Graham MP](#) (*Conservative, Gloucester*)

[Peter Grant MP](#) (*Scottish National Party, Glenrothes*)

[Wera Hobhouse MP](#) (*Liberal Democrat, Bath*)

[Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Jeremy Lefroy MP](#) (*Conservative, Stafford*)

[Mr Pat McFadden MP](#) (*Labour, Wolverhampton South East*)

[Craig Mackinlay MP](#) (*Conservative, South Thanet*)

[Seema Malhotra MP](#) (*Labour (Co-op), Feltham and Heston*)

[Mr Jacob Rees-Mogg MP](#) (*Conservative, North East Somerset*)

[Emma Reynolds MP](#) (*Labour, Wolverhampton North East*)

[Stephen Timms MP](#) (*Labour, East Ham*)

[Mr John Whittingdale MP](#) (*Conservative, Maldon*)

[Hywel Williams MP](#) (*Plaid Cymru, Arfon*)

[Sammy Wilson MP](#) (*Democratic Unionist Party, East Antrim*)

### Powers

The Committee is one of the departmental select committees; its powers are set out under a Temporary Standing Order of 4 July 2017.

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/exeucom](http://www.parliament.uk/exeucom) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

### **Committee staff**

The current staff of the Committee are James Rhys (Committee Clerk), Claire Cozens (Second Clerk), Dr Ariella Huff (Senior Committee Specialist), Duma Langton (Committee Specialist), Adrian Hitchins (Committee Specialist), Julian Mazowiecki (Committee Specialist), Eoin Martin (Committee Specialist), Jonathan Arkless (Committee Specialist), Leo Oliveira (Senior Committee Assistant), Hannah Finer (Senior Committee Assistant), Henry Ayi-Hyde (Committee Assistant), Estelle Currie (Senior Media Officer) and Ben Shave (Media and Communications Officer).

### **Contacts**

All correspondence should be addressed to the Clerk of the Exiting the European Union Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 7568; the Committee's email address is [exeucom@parliament.uk](mailto:exeucom@parliament.uk).



# Contents

---

<b>Conclusions and recommendations</b>	<b>3</b>
<b>1 Introduction</b>	<b>9</b>
The negotiations: deal	9
This report	10
<b>2 The Withdrawal Agreement</b>	<b>12</b>
Citizens' rights	12
Backstop	14
Review clause: transition/implementation or the backstop?	20
Financial settlement	22
Governance and dispute resolution	24
<b>3 The Political Declaration on the Framework for the Future Relationship</b>	<b>27</b>
Political Declaration	27
Future EU-UK economic relationship	27
Trade in services	29
UK participation in EU agencies and programmes	30
Government view	31
Security and foreign policy	33
Oversight of negotiations on the future relationship	35
The role of the House	35
The role of the devolved administrations	36
Select Committee scrutiny	37
<b>4 What happens next?</b>	<b>39</b>
Parliament's role in approving the deal	39
<b>Formal minutes</b>	<b>41</b>
<b>Witnesses</b>	<b>42</b>
<b>Published written evidence</b>	<b>49</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>50</b>



# Conclusions and recommendations

---

## The negotiations: deal

1. The adoption by the Government and the EU of the Withdrawal Agreement and Political Declaration on the future relationship is a significant moment. Since the Government triggered Article 50, the negotiations have been conducted against a hard deadline and in circumstances of great political sensitivity, reflecting their critical importance to the UK and its place in the world. Parliament will now vote on whether to give its consent to the deal the Government has brought back from Brussels. In this report, we assess what the deal would mean, and we set out what might happen next, depending on the result of the vote in the House of Commons. However, it is clear that after 20 months of intense negotiations, only the terms of the UK's exit are fully known; the nature of the future relationship with the European Union is not, and therefore does not provide long-term certainty. (Paragraph 5)

## Citizens' rights

2. We recommend that in addition to a digital code, the Government should also provide EU citizens with a physical document. (Paragraph 15)
3. The Citizens' Rights part of the Withdrawal Agreement is largely unchanged from the version that was published in March 2018. There remains significant uncertainty for UK citizens living and working in EU countries, as the questions of their right to ongoing free movement and recognition of their professional qualifications remain unresolved. This uncertainty will therefore continue into the transition/implementation period and the negotiations on the future relationship. (Paragraph 16)
4. Uncertainty remains for EU citizens in the UK, over whether the Home Office has the capacity to process potentially over three million applications for settled status efficiently and fairly. (Paragraph 17)
5. We note that the proposed structure of the future negotiations includes the 'mobility' of citizens in a separate section on 'socio-economic cooperation.' We urge the Government and the European Union to prioritise the settlement of these issues as early as possible in the future relationship negotiations, to give clarity and certainty to all those people affected. The Government has not yet set out how UK immigration policy will apply to EU citizens arriving in the UK after December 2020 when the current transition/implementation period is due to end. Despite repeated promises, Ministers have still not published their planned White Paper on future immigration policy, which will form the basis of the negotiations on the socio-economic cooperation part of the future relationship. It would be unacceptable for the Government not to publish the White Paper before the vote on 11 December 2018. (Paragraph 18)

## Backstop

6. The backstop derives from the joint declaration agreed by the UK and the EU in December 2017 which set out three mechanisms for avoiding a hard border between Northern Ireland and Ireland. It has been negotiated to ensure that in all circumstances the border between Northern Ireland and Ireland remains as it is now with no checks and no infrastructure. The backstop would involve an EU-UK Single Customs Territory including provisions to ensure a level playing field between the EU and the UK. Northern Ireland would be bound by the full EU Customs Code. This would be the default relationship between the UK and the European Union after the end of the transition/implementation period, unless and until a future economic relationship is agreed that can maintain an open Ireland/Northern Ireland border and protect all parts of the Belfast (Good Friday) Agreement. The proposals put forward so far by the Government to maintain in future both frictionless trade and an open border on the island of Ireland, the ‘Chequers proposals’, have previously been rejected by the European Union as unacceptable. (Paragraph 35)
7. In December 2017, we said that we did not see how it would be possible to reconcile maintaining an open border on the island of Ireland with leaving the Single Market and Customs Union, which would inevitably make the Northern Irish border the UK’s customs and regulatory border with the European Union. Since then, we have seen no realistic, long-term proposals from the Government that would address this. (Paragraph 36)
8. The agreement on a UK-wide backstop is in line with the commitment made in the December 2017 Joint Report to ensure “the same unfettered access for Northern Ireland’s businesses to the whole of the United Kingdom internal market.” Nevertheless, the fact that there will be greater adherence to single market rules in Northern Ireland under the backstop compared to the rest of the UK means that some checks will be necessary for certain goods moving from Great Britain to Northern Ireland, although the UK will have the power not to apply checks on goods travelling in the other direction. We also note that some checks already exist for goods crossing the Irish Sea and both sides have agreed that any additional checks should be conducted in the least intrusive way possible. (Paragraph 37)
9. The backstop Protocol in the Withdrawal Agreement means that a Northern-Ireland only backstop would effectively remain in place as the ultimate fall-back, should both sides agree to terminate the EU-UK Single Customs territory. Should the UK decide to leave the Single Customs Territory and seek to negotiate a trade agreement with another country during the operation of the backstop or if the UK were to negotiate a looser CETA-style free trade agreement with the EU after the end of the transition/implementation period, neither agreement would include Northern Ireland and both would result in more checks between Northern Ireland and the rest of the UK. As we noted in our September 2018 report, a CETA-style agreement with the EU would not, on its own, ensure the type of friction-free trade with the EU that many UK companies with just-in-time supply chains need. We do not consider this to be a viable option. The commitment to avoiding a hard border enshrined in the Withdrawal Agreement will continue to shape the future relationship between the UK and the EU because it will not be possible for the UK to decide on customs and regulatory arrangements which negate that commitment. (Paragraph 38)

### Review clause: transition/implementation or the backstop?

10. We note the extension clause for the transition/implementation period, which we called for in March 2018. While we agree with the Government that the best outcome would be to conclude the agreement, ratification and implementation of the future relationship before the end of 2020, this timeframe is likely to be unrealistic. Negotiations on withdrawal issues have lasted 18 months. The future relationship negotiations will have to cover a far wider range of issues, including trade in goods and services, foreign policy coordination, policing and information sharing, participation in EU agencies, agriculture, fisheries, data, labour mobility and the recognition of professional qualifications, broadcasting, intellectual property, public procurement, consumer safety, aviation, freight, energy, medicines, and scientific co-operation. Furthermore, the future relationship negotiations will be interrupted in 2019 by the European Parliament elections and the appointment of a new European Commission. The negotiations will be further complicated and could take significantly longer because the Government has still not yet set out clear objectives for the future relationship that are realistic, workable and have the support of Parliament. In addition, each of the 27 individual EU Member States, their national and, where applicable, regional Parliaments, will be able to exercise a veto on the overall outcome. (Paragraph 45)
11. The review clause in the Withdrawal Agreement gives the Government a choice of whether to extend the transition/implementation period or to activate the backstop, if more time is needed to negotiate, ratify or implement the future relationship. The Government will have to decide whether either of these options are necessary by 1 July 2020. Both choices come with costs. An extension to the transition/implementation period would mean the UK making additional payments to the EU at a level as yet undetermined, and, with no say in EU decision-making, remaining a rule taker at least for a further one or two years. Alternatively, activating the backstop would result in immediate barriers to UK-EU trade in goods and services. As a result, the UK faces a pivotal choice in July 2020 if the future EU-UK relationship is not in place, and a further cliff edge either one or two years later if the transition/implementation period is extended. At any of these points, the UK could face the threat of significant economic disruption that would reduce its leverage in the negotiations, the longer that they continue. The Withdrawal Agreement and the Political Declaration therefore do not provide certainty. (Paragraph 46)

### Financial settlement

12. The UK's agreement to the financial settlement will be legally binding under international law once the Withdrawal Agreement has been ratified. We recommended previously that, if the Government wished to make the payment of the financial settlement conditional on reaching a binding agreement on the future relationship, it would need to secure the agreement of the EU27 to include text to this effect in the Withdrawal Agreement. This provision is not contained explicitly in the final Withdrawal Agreement, despite assurances from previous Secretaries of State that they would seek to include such a clause. We note that Article 184 of the Withdrawal Agreement commits both sides to negotiate the future relationship in good faith, but this does not guarantee that the next phase of negotiations will lead

to a successful outcome. We do not conclude that Article 184 of the Withdrawal Agreement represents the kind of conditionality that would allow the UK to suspend payments under the financial settlement once these have been agreed in the Withdrawal Agreement. (Paragraph 51)

13. The Government has estimated that the Financial Settlement will cost between £35 billion and £39 billion. Since that estimate was made, the Government has agreed that the transition/implementation period can be extended for either one or two years. Before Parliament votes on whether to approve the Withdrawal Agreement and Political Declaration, the Government should set out its estimates of possible UK liabilities that would arise if the transition/implementation period is extended. It should also make clear whether the money the UK owed under international law would be different in the event of a no deal outcome and provide a breakdown of relevant comparable liabilities and costs for each scenario. (Paragraph 52)

### Governance and dispute resolution

14. We welcome the pragmatic agreement on the governance arrangements for the Withdrawal Agreement. It ensures that neither the EU nor the UK is bound by the other jurisdiction's courts, which in previous reports we said would be unacceptable, and the two sides have agreed to use independent arbitration to resolve relevant disputes that cannot be resolved in the Joint Committee. However, we note that any matters of EU law must be referred to the CJEU. In these cases, its interpretation of the EU's rules will ultimately prevail and the CJEU will therefore have an ongoing role in overseeing the Withdrawal Agreement, including after the end of the transition/implementation period. (Paragraph 60)

### Government view

15. We were told throughout our scrutiny of the negotiations by successive Secretaries of State for Exiting the European Union, and by Michel Barnier and other interlocutors from the European Union, that the Political Declaration would be detailed and substantive. We deeply regret that it is neither. The document only sets out a series of options for the UK's trade with the European Union, its closest and largest trading partner, and establishes a framework for ongoing conversations across a range of areas. We note that the Political Declaration expresses a high level of ambition about the nature and scope of the future relationship, but ambition is no guarantee of success, nor is it clear how it would deliver at least the same outcomes as we have under our current relationship with the EU. People, businesses and institutions will therefore continue to face significant uncertainty about the future terms of EU-UK trade, which will affect future investment in the UK economy. (Paragraph 79)
16. There is insufficient detail in the Political Declaration for us to judge whether our tests have been met, with the exception of the one relating to tariffs. What is clear from the Political Declaration is that our degree of market access to the European Union will be related to the degree to which we adhere to its rules. We welcome the fact that both sides have said there should be no tariffs or quotas. There is also an indication that burdensome rules of origin checks might be unnecessary, and there are measures which, if agreed, would facilitate trade in services and allow for the

free exchange of data. However, outside the Single Market and Customs Union there cannot be frictionless trade. This will mean additional costs and bureaucracy for many UK businesses, however ambitious any future arrangement outside the Single Market and Customs Union may be. The Government needs to be frank and open about how far it is willing to align with EU rules, at the expense of UK regulatory autonomy, if its main priority is to secure EU-UK trade that is as frictionless as possible. This is not a choice the Government has so far been willing to make. The Political Declaration makes clear, that because of the number of issues crucial to the future of the EU-UK relationship which are still to be decided, the Brexit process will not be concluded by March 2019. Indeed, negotiations on the future relationship are likely to go on for a number of years. (Paragraph 80)

17. We note that the Government's analysis of EU exit indicates that, over a 15-year period, the UK will be economically poorer under all possible scenarios than it would have been under current arrangements. The Government has also said that the Political Declaration allows for a "spectrum" of options. However, we note that the Government is seeking an economic relationship that would enable frictionless trade to continue. The Government must be honest that this will entail trade-offs, specifically, adhering to rules over which we no longer have a say, and will limit the number of options it has to choose from in the future relationship negotiations. (Paragraph 85)

### Security and foreign policy

18. The Political Declaration includes objectives for the future EU-UK internal and external security relationships. These include the UK's participation in cross-border data sharing agreements, continued cooperation with the EU's law enforcement and criminal justice agencies and securing the UK's place in Europe's foreign policy and defence structures, as we judged would be essential in our key tests on future security and foreign policy cooperation. As the dispute over UK participation in Galileo has demonstrated, however, the depth of cooperation will, in many cases, depend on what the EU decides it wishes to allow under EU rules. It is imperative that negotiations on these issues are settled as early as possible. The overall level of EU-UK cooperation will be less than it is now, as will be the UK's influence on the strategic direction of EU foreign and security policy. (Paragraph 91)

### The role of the House

19. If the Withdrawal Agreement is approved, it is essential that Parliament has a central role in the scrutiny of the negotiations on the future relationship that take place after the UK has left the EU. Consideration of the legislation implementing the Withdrawal Agreement will provide an opportunity to set out the role that the House should have in agreeing a mandate for the Government for the future relationship negotiations; maintaining oversight of the progress and conduct of the negotiations; and ensuring that the House is given a meaningful and timely role in approving any agreements reached, including the circumstances in which the UK will opt to extend the implementation/transition period. This is a matter to which we will return in more detail. (Paragraph 95)

### The role of the devolved administrations

20. If the Withdrawal Agreement is approved by the House, negotiations on the future relationship between the UK and the EU will profoundly affect the devolved administrations. For the sake of the future of the United Kingdom, it is essential that the voices of the devolved administrations are heard. We have previously noted that intergovernmental arrangements will only work if they work for all the nations of the UK and have previously expressed concern at perceived shortcomings. We will continue to engage with our counterparts in the devolved assemblies to assess whether the arrangements made to ensure that the devolved administrations are able to inform the UK's negotiating position during negotiations on the future relationship between the EU and the UK are effective. (Paragraph 99)

### Select Committee scrutiny

21. We reiterate our previous recommendation that in order to ensure appropriate scrutiny of the negotiations on the future relationship there must be a select committee dedicated to this task, regardless of any future changes in the machinery of Government. (Paragraph 103)

### Parliament's role in approving the deal

22. The decision of the House of Commons on whether to approve the Withdrawal Agreement and framework for the future relationship negotiated with the European Union will not simply reflect a binary choice between leaving the EU with the deal that has been negotiated or leaving without a deal. This "meaningful vote" will provide an opportunity for Parliament to express its view by potentially placing conditions on approval or giving reasons for rejection. In the event of a rejection, section 13 of the EU (Withdrawal) Act 2018 sets out requirements that the Government must make a statement within 21 days and, subsequently, schedule a debate on a motion in neutral terms, which will now be amendable. (Paragraph 111)
23. Regardless of the procedures set out in section 13 of the EU (Withdrawal) Act, a range of options will remain open to the Government as to how to proceed in the event of the Withdrawal Agreement being rejected. These include bringing a motion to approve the deal, with or without further negotiation, back to the House. Only the Government is able to make this decision; it cannot be compelled by a resolution of the House to bring the approval motion back for further consideration. If the House of Commons does not approve a deal and if no agreement were made to extend the Article 50 process, the UK would leave the EU without a deal on 29 March 2019. However, there is probably no majority in Parliament for leaving with no deal and as Parliament has given itself the opportunity to consider and vote on other options, these may include the extension of Article 50. (Paragraph 112)

# 1 Introduction

---

## The negotiations: deal

1. On 14 November 2018, the Prime Minister announced from Downing Street that the Cabinet had collectively endorsed a deal, struck by EU and UK negotiators, on the terms of the UK's exit from the European Union, along with a framework for the future EU-UK relationship.<sup>1</sup> The terms of the UK's exit are set out in a Withdrawal Agreement<sup>2</sup> and the aims of the future EU-UK relationship are set out in a Political Declaration.<sup>3</sup> On 25 November 2018, both documents were adopted in principle by the European Council.<sup>4</sup>

2. The Withdrawal Agreement contains legal commitments relating to citizens' rights, the backstop for the Northern Ireland/Ireland border, a financial settlement, a governance structure to manage any future disputes over the Withdrawal Agreement, and the terms of a transition/implementation period.<sup>5</sup> Most of these provisions apply only up to the end of the transition/implementation period, or for a time-limited period thereafter.

3. In contrast to the legally binding Withdrawal Agreement, the Political Declaration is an aspirational document. It contains broad negotiating objectives for the future EU-UK relationship on the economy, security and foreign policy. The sections on the economy do not set out a single, end state for negotiators to work towards. Instead, there is a "spectrum"<sup>6</sup> of choices which could lead to a looser CETA-style free trade agreement between the EU and the UK or to a relationship that is based on following EU rules and a close customs arrangement. These options are very different and would involve trade-offs with profound consequences for many businesses based in the UK and for the wider UK economy.

4. The Withdrawal Agreement can only come into force if it is ratified before 29 March 2019. Both the Withdrawal Agreement and the Political Declaration must now be approved by the UK and European Parliaments. If approved by the UK Parliament, the European Parliament will then be asked to give its consent before the deal is presented to the European Council for final approval by 'super qualified majority'.<sup>7</sup> If approved and ratified, the framework for the detailed negotiations on the future relationship will be set out before 29 March 2019 but the negotiations themselves will begin only once the UK

---

1 Prime Minister, [PM's statement on Brexit](#), 14 November 2018

2 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018

3 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018

4 European Council, [Special meeting of the European Council \(Art. 50\)](#), 25 November 2018

5 The Withdrawal Agreement also contains legal provisions on a range of other separation issues, including data protection, geographical indications, ongoing police and judicial cooperation in criminal matters, intellectual property, ongoing public procurement procedures, ongoing judicial cooperation on civil and commercial matters and ongoing judicial and administrative procedures.

6 HC Debate 22 November 2018, Vol. 649, [Col. 1096](#)

7 Approval by at least 72% of the 27 participating Member States also comprising 65% of the EU-population – excluding the UK

has left the EU<sup>8</sup> and will continue during the transition/implementation period.<sup>9</sup> This is contrary to the Prime Minister's statement in her Lancaster House speech in January 2017, in which she said:

I want us to have reached an agreement about our future partnership by the time the 2-year Article 50 process has concluded. From that point onwards, we believe a phased process of implementation, in which both Britain and the EU institutions and Member States prepare for the new arrangements that will exist between us will be in our mutual self-interest.<sup>10</sup>

**5. The adoption by the Government and the European Union of the Withdrawal Agreement and Political Declaration on the future relationship is a significant moment. Since the Government triggered Article 50, the negotiations have been conducted against a hard deadline and in circumstances of great political sensitivity, reflecting their critical importance to the UK and its place in the world. Parliament will now vote on whether to give its consent to the deal the Government has brought back from Brussels. In this report, we assess what the deal would mean, and we set out what might happen next, depending on the result of the vote in the House of Commons. However, it is clear that after 20 months of intense negotiations, only the terms of the UK's exit are fully known; the nature of the future relationship with the European Union is not, and therefore does not provide long-term certainty.**

## This report

6. Since Article 50 was triggered on 29 March 2017, we have published a series of reports on the progress of the negotiations.<sup>11</sup> In this report, we examine the key elements of the deal that has been reached between the Government and the European Union.

7. On 21 November 2018, we took evidence from Agata Gostynska-Jakubowska, Senior Research Fellow at the Centre for European Reform; Professor Franklin Dehousse, a former Judge at the General Court of the European Union and Dr Holger Hestermeyer, Shell Reader in International Dispute Resolution at King's College London.<sup>12</sup> On 3 December 2018, we took evidence on the terms of the deal from the Rt Hon. Stephen Barclay MP, who was appointed Secretary of State for Exiting the European Union on 16 November 2018,<sup>13</sup> and Oliver Robbins, the Prime Minister's Europe Advisor and UK Coordinator for the Article 50 negotiations. We draw upon that evidence in this report and we thank everyone who has contributed to our inquiry.

8 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 22 November 2018, para. 141

9 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 22 November 2018, para. 144

10 Prime Minister, [The government's negotiating objectives for exiting the EU](#), 17 January 2017

11 Exiting the European Union Committee, [Publications](#)

12 Exiting the European Union Committee, [Oral evidence: The progress of the UK's negotiations on EU withdrawal](#), HC 372, 21 November 2018

13 Gov.uk, [Secretary of State for Exiting the European Union, Stephen Barclay MP](#). His predecessor, the Rt Hon. Dominic Raab MP resigned from the Government on 15 November 2018, the morning after the Cabinet collectively endorsed the Withdrawal Agreement and Outline Political Declaration, as the provisions of the deal did not carry his support. See, The Times, [Full text of Dominic Raab and Esther McVey's letters of resignation](#), 15 November 2018

8. On 4 December 2018, the House voted to hold Ministers in contempt of Parliament for their failure to comply with the requirements of a motion, agreed by the House on 13 November 2018, that the Government should publish “the final and full legal advice provided by the Attorney General to the Cabinet concerning the EU Withdrawal Agreement and the framework for the future relationship”, and ordered its immediate publication. After the vote on 4 December 2018, the Leader of the House said that the Government would publish the “final and full advice” the following day. We did not have time to consider the legal advice in full before publishing this report.

## 2 The Withdrawal Agreement

---

### Citizens' rights

9. Since the EU Referendum in June 2016, the status of UK citizens in the EU, and the status of EU nationals in the UK, has been unclear. This has led to uncertainty and anxiety for citizens and their families.

10. The Withdrawal Agreement includes provisions that protect citizens' rights. It enables people who are legally resident, whether they are UK citizens in the EU or EU citizens here, to continue to reside in their host state.<sup>14</sup> It includes a right of return for up to five years for those with Permanent Residence status. Furthermore, there is agreement on reciprocal healthcare and social security arrangements, a partial agreement on the recognition of professional qualifications—protecting recognition only in the country where the decision to recognise was issued—and some rights to family reunion for life.<sup>15</sup> Courts in the UK will be able to make preliminary references to the CJEU on the interpretation of the Citizens' Rights part of the Withdrawal Agreement for eight years, starting from the end of the transition/implementation period.<sup>16</sup>

11. In our July 2018 Report on the rights of UK and EU citizens, we noted that previous versions of the draft Withdrawal Agreement did not contain the right to ongoing free movement for UK citizens living and working in the EU.<sup>17</sup> We said that both sets of negotiators had failed to make it clear whether this right would form part of the negotiations on the future EU-UK relationship and that:

there are associated rights that will fall alongside the loss of free movement. These include the ability of some professionals to operate in more than one Member State, their ability to offer cross border services and the right to open a business in another Member State.<sup>18</sup>

12. We concluded that the matter of ongoing free movement should not be “left wholly to the negotiations on the future relationship as this would mean a period of continuing uncertainty”, and if it was not possible to include this issue in the Withdrawal Agreement, then “at the very least, it should be explicitly included in the Political Declaration.”<sup>19</sup> The

---

14 Citizens must be resident in their host state by the end of the transition/implementation period to qualify

15 The right to be joined by future spouses will be subject to national law. The right to return to the UK with a non-UK spouse will be subject to UK domestic law

16 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Chapter 2

17 In this instance, ‘ongoing free movement rights for UK citizens’ refers to maintaining the right to free movement for those UK nationals who are living in the EU and covered by the Withdrawal Agreement.

18 Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens](#), Eighth Report of Session 2017–19, 23 July 2018, para. 15

19 Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens](#), Eighth Report of Session 2017–19, 23 July 2018, para. 15. The UK Government [Explainer for the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union 2018](#), said “As part of the future relationship with the EU, the UK will also seek to secure onward movement opportunities for UK nationals in the EU who are covered by the citizens’ rights agreement.” This is not explicit in the Political Declaration.

Political Declaration says that the two sides will seek to agree “appropriate arrangements on those professional qualifications which are necessary to the pursuit of regulated professions, where in the Parties’ mutual interest.”<sup>20</sup>

13. For EU citizens living in the UK, we have raised concerns over the Home Office’s ability to manage the task of processing over three million applications for settled status, which is the Government’s preferred approach for regularising the status of EU citizens. In our July 2018 Report, we said:

we are concerned that this is a task of unprecedented scale for the Home Office and it is being done within a very tight time frame. The experience of the Windrush generation shows that, where errors occur, it can lead to devastating consequences for individuals and their families.<sup>21</sup>

14. We were also concerned by the Government’s decision to issue a digital code, instead of a physical document, to EU citizens in the UK to prove their Settled Status to employers, landlords and public service providers. We said:

[A digital code] might work well for many, but for some the risk of a civil penalty for employing or renting to someone without the correct immigration status, and a lack of understanding of the new system, may deter them from employing or renting to EU citizens, or create difficulties in enabling their status in other circumstances to be confirmed.<sup>22</sup>

**15. We recommend that in addition to a digital code, the Government should also provide EU citizens with a physical document.**

**16. The Citizens’ Rights part of the Withdrawal Agreement is largely unchanged from the version that was published in March 2018. There remains significant uncertainty for UK citizens living and working in EU countries, as the questions of their right to ongoing free movement and recognition of their professional qualifications remain unresolved. This uncertainty will therefore continue into the transition/implementation period and the negotiations on the future relationship.**

**17. Uncertainty remains for EU citizens in the UK, over whether the Home Office has the capacity to process potentially over three million applications for settled status efficiently and fairly.**

**18. We note that the proposed structure of the future relationship negotiations includes the ‘mobility’ of citizens in a separate section on ‘socio-economic cooperation.’ We urge the Government and the European Union to prioritise the settlement of these issues as early as possible in the future relationship negotiations, to give clarity and certainty to all those people affected. The Government has not yet set out how UK immigration policy will apply to EU citizens arriving in the UK after December 2020**

20 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 36

21 Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens](#), Eighth Report of Session 2017–19, 23 July 2018, para. 48

22 Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal: the rights of UK and EU citizens](#), Eighth Report of Session 2017–19, 23 July 2018, para. 49. On 8 December 2018, the Residential Landlords Association also called on the Home Office to provide hard copy documents to EU citizens for the purpose of proving their status in the UK. See, Residential Landlords Association: [RLA calls for documents for EU citizens in letter to Home Secretary](#)

**when the current transition/implementation period is due to end. Despite repeated promises,<sup>23</sup> Ministers have still not published their planned White Paper on future immigration policy, which will form the basis of the negotiations on the socio-economic cooperation part of the future relationship. It would be unacceptable for the Government not to publish the White Paper before the vote on 11 December 2018.**

## Backstop

19. The backstop was the most difficult part of the Withdrawal Agreement for the two sides to agree. On 17 January 2017, the Prime Minister said in her Lancaster House Speech that outside the Customs Union—including the Common Commercial Policy and the Common External Tariff—the UK would be able to strike bilateral trade deals with other countries, which is one of the Government’s main objectives.<sup>24</sup> On 22 September 2017, the Prime Minister said in her Florence Speech that both the EU and the UK had “stated explicitly that we will not accept any physical infrastructure at the [Northern Ireland/Ireland] border.”<sup>25</sup> In December 2017, we said that we did not

see how it will be possible to reconcile there being no border with the Government’s policy of leaving the Single Market and the Customs Union, which will inevitably make the border between Northern Ireland and the Republic of Ireland the EU’s customs border with the UK<sup>26</sup>

20. The negotiations on the future relationship will only take place once the UK has left the EU. However, the two sides agreed in the December 2017 Joint Report on a backstop to ensure continuation of an open border, regardless of the outcome of the future relationship negotiations. The backstop would only come into effect if there is no other workable EU-UK relationship which maintains an open border, or if the UK Government cannot bring forward any other “specific solutions” for maintaining an open border.<sup>27</sup> The December 2017 Joint Report said that, if the backstop is activated, the UK will maintain

full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all island economy and the protection of the 1998 Agreement.<sup>28</sup>

23 For example, on 17 October 2017, Amber Rudd MP told the [Home Affairs Committee](#), “We have our White Paper coming out on immigration by the end of the year [referring to 2017].” On 28 March 2018, Amber Rudd told the [Home Affairs Committee](#) “We have decided to wait until the Migration Advisory Committee reports in its entirety in September this year to go forward with the policy and the White Paper after that.” On 10 July 2018, the current Home Secretary Sajid Javid told [the Home Affairs Committee](#) “The timeframe that we set out, which is a White Paper in the autumn followed by an immigration Bill early next year, given that our plans are based on having an implementation period, that will set out the process and I think it will be done in the right way.” On 3 December 2018, the [Financial Times reported](#) an interview in which Sajid Javid told the BBC: “It’s very unlikely to be published before the vote.”

24 Prime Minister, [The government’s negotiating objectives for exiting the EU](#), 17 January 2017

25 Prime Minister, [Florence speech: a new era of cooperation and partnership between the UK and the EU](#), 22 September 2017.

26 Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal, Second Report of Session 2017–19](#), HC 372, 1 December 2017. Para 47. We repeated this conclusion in our third report. See Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal: December 2017 to March 2018](#), Third Report of Session 2017–19, HC 884, 18 March 2018, para 62

27 European Commission & HM Government, [Joint report on progress during phase 1 of negotiations under Article 50 TEU on the UK’s orderly withdrawal from the EU](#), 8 December 2017, para 49

28 European Commission & HM Government, [Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union](#), 8 December 2017

21. The Joint Report also included a commitment that the Government would ensure that “no new regulatory barriers develop between Northern Ireland and the rest of the United Kingdom”, unless the Northern Ireland Executive and Assembly agreed “that distinct arrangements are appropriate for Northern Ireland, consistent with the Belfast/ Good Friday Agreement.”<sup>29</sup>

22. The European Commission initially interpreted the backstop as applying to the territory of Northern Ireland only. It published a draft Withdrawal Agreement Protocol on the backstop that set this out. The Government rejected this on the basis that it would establish a border in the Irish Sea and would undermine the constitutional integrity of the UK. We agreed with the Government that the backstop must apply to the whole of the UK and not to Northern Ireland only, as that would be the only way to maintain frictionless trade on the island of Ireland, without creating a border in the Irish Sea.<sup>30</sup>

23. On 7 June 2018, the Government set out proposals for a UK-wide backstop in a technical note, although it acknowledged that it did not include proposals on regulatory standards that would be needed to make the backstop workable.<sup>31</sup> The Government also said that any backstop should be “time limited”.<sup>32</sup> We said that the Government must set out how this would be possible, “when, by definition, [the backstop] would need to remain in place until such time as an alternative arrangement that would achieve the same outcome could be implemented.”<sup>33</sup>

24. The backstop Protocol in the Withdrawal Agreement is significantly different to the version that was first set out by the European Commission in February 2018. The EU has conceded that the backstop could be UK-wide. If activated, the UK and the EU would form a Single Customs Territory to avoid the need for tariffs, quotas or checks on rules of origin for goods—reducing the need for checks on goods between Northern Ireland and the rest of the UK, and obviating the need for tariffs, quotas and checks on rules of origin between the UK and the EU.<sup>34</sup>

25. The UK and the EU have also agreed to a level playing field, should the backstop be activated, including ‘non-regression’ clauses for environmental, labour and social protection rules, meaning that both sides have committed not to lower standards. On taxation, the UK has agreed to maintain and commit itself to a range of international standards and principles of good governance, and to keep to some provisions of EU law.

---

29 [European Commission & HM Government, Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union](#), 8 December 2017, paras 43, 49 & 50

30 [Exiting the European Union Committee, The progress of the UK's negotiations on EU withdrawal \(June to September 2018\)](#), Ninth Report of Session 2017–19, HC 1554, 18 September 2018, para. 23

31 [Cabinet Office, Technical note on temporary customs arrangement](#), 7 June 2018, para 2

32 [Cabinet Office, Technical note on temporary customs arrangement](#), 7 June 2018

33 [Exiting the European Union Committee, The progress of the UK's negotiations on EU withdrawal \(June to September 2018\)](#), Ninth Report of Session 2017–19, HC 1554, 18 September 2018, para 24

34 [Department for Exiting the European Union, Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Protocol on Ireland/Northern Ireland, article 6

For rules regulating competition, the Withdrawal Agreement sets out common principles that the UK and the EU would each apply. The UK has also agreed to harmonise rules on state aid with the EU in future, including cooperation between UK and EU regulators.<sup>35</sup>

26. Additional provisions will apply to Northern Ireland, but not to the rest of the UK, if the backstop is activated. Northern Ireland would be required to follow the EU's Single Market rules to the extent that is necessary to maintain an open border. It would be subject to the EU's Union Customs Code, which would ensure that Northern Ireland's businesses would not face restrictions when placing products in Ireland, or in the rest of the Single Market. Northern Ireland would also follow EU rules on goods, Sanitary and Phytosanitary Measures,<sup>36</sup> agricultural production and marketing, VAT and excise in respect of goods, and state aid.<sup>37</sup> The CJEU would have direct jurisdiction over Northern Ireland in respect of the EU rules that are applicable.

27. The Joint Report committed both sides to maintaining full alignment with rules supporting "North-South cooperation, the all island economy and the protection of the 1998 Agreement". A mapping exercise was undertaken jointly by the UK and Irish governments, together with the EU Commission, to set out precisely which areas of regulation would need to be covered. We asked the then Secretary of State, the Rt Hon David Davis MP, for this to be published in April 2018 and were promised it would be provided to us soon. We pursued this matter subsequently, including most recently with the current Secretary of State in evidence on 3 December 2018. He has now informed us that he will publish the mapping exercise on Friday 7 December 2018. We did not have the opportunity to comment on this document before considering this report.

28. While there would be no checks for goods travelling between Northern Ireland and Ireland, or between Northern Ireland and Great Britain,<sup>38</sup> there would be some checks on goods travelling from Great Britain to Northern Ireland. The EU and the UK have agreed to carry out these checks in the least intrusive way possible. For example, industrial goods would be subject to checks based on an assessment of risk, and these could take place at traders' premises. These would be carried out by UK authorities. For agricultural products, existing checks at ports and airports would continue, but the frequency of these would be increased from what they are today.<sup>39</sup>

29. The backstop would also result in some additional friction for trade between the UK and the EU, compared with today, despite the backstop equating to an EU-UK Single Customs Territory. Dr Hestermeyer described the level of friction that would result from the Single Customs Territory in the following terms:

---

35 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Annex 4

36 Those relating to food safety and animal and plant health

37 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Protocol on Ireland/Northern Ireland, Annex 5

38 The Withdrawal Agreement states explicitly that goods from Northern Ireland should have "unfettered market access to the rest of the united Kingdom's internal market."

39 European Commission, [Factsheet: Protocol on Ireland and Northern Ireland](#), 14 November 2018

I would argue it is a customs union but, in terms of regulatory alignment, accepting certificates, permits and licences and the regulatory part that is required to have frictionless trade, it is weak. Accordingly, there will be more friction than there is now. There will be less friction than if there was not a customs union, but more than now.<sup>40</sup>

30. On 3 December 2018, Oliver Robbins told us that there is “no presumption in the backstop of fluid trade between Great Britain and the European Union”.<sup>41</sup> He said the “degree of regulatory co-operation between the United Kingdom as a whole and the European Union will be a factor in the way both parties decide how to set their systems of checks and controls. Nothing is assumed in either direction.” Without such agreements, and if the transition/implementation period is not extended, goods would be subject to checks, and therefore potential delays, in as little as 21 months after the UK leaves the EU. There could also be new barriers for companies that trade in services. Oliver Robbins told us:

The protocol only relates to those aspects of EU law that are required to avoid a border in Northern Ireland. That is about tangible goods; it says nothing about services. If the backstop were to apply in the absence of any other agreement with the European Union, there would be no services relationship.<sup>42</sup>

For example, the backstop does not contain agreements on data, labour mobility or on the mutual recognition of professional qualifications. There are also no provisions to maintain current levels of market access for financial services. The impact on trade would affect both the EU and the UK. It is possible that the EU and UK could agree deals to mitigate some of these barriers to trade before the end of the transition/implementation period, where it is in the mutual interests of both sides.

31. The Withdrawal Agreement allows for the cessation of the backstop “in whole or in part”, if the Joint Committee decides that the Protocol “in whole or in part” is no longer necessary.<sup>43</sup> Dr Hestermeyer told us that the Withdrawal Agreement would allow for circumstances in which the backstop has been activated but the Government then decides to negotiate a CETA-style free trade agreement with the EU. In this case, the free trade agreement could replace the backstop provisions that are applicable to Great Britain, but the provisions that would relate to Northern Ireland would continue to apply.<sup>44</sup> If checks and controls were needed at the border as a result, which would almost certainly be the case, Dr Hestermeyer said that, in these circumstances, “the [EU-UK] customs union would fall away and trade between Northern Ireland and Great Britain would get more difficult.”<sup>45</sup>

32. The Withdrawal Agreement states that UK and EU fish products would not be included in the tariff-free provisions of the Single Customs Territory, unless an agreement on access

---

40 [Q2365](#)

41 [Q3348](#)

42 [Q3350](#)

43 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Protocol on Ireland/Northern Ireland, article 20

44 [Qq3284 &3286](#)

45 [Q3317](#)

to waters and fishing opportunities has been concluded by 1 July 2020.<sup>46</sup> However, again, different provisions would apply to Northern Ireland. The Withdrawal Agreement states that fish products brought into the Single Customs Territory from “vessels flying the flag of the UK and registered in Northern Ireland” would be exempted from duties, but the Joint Committee, established under the governance Part of the Withdrawal Agreement, would need to decide which conditions would apply, “including in quantitative terms”.<sup>47</sup> The Withdrawal Agreement does not set out the level of access that Northern Ireland would have to the EU market, or the level of access that EU vessels might have to UK waters in respect of Northern Ireland. Dr Hestermeyer told us:

It is my understanding that, the way it is currently constructed, Northern Irish fisherman, under the conditions later to be fixed, would have access to the market, but this would not govern anything about fishing rights. It remains true that the Irish fishing fleet would currently not know what access they will have and that will have to be negotiated in the future.<sup>48</sup>

33. The Government has said throughout the negotiations that it does not intend the backstop to be implemented. On 14 November 2018, Michel Barnier also said, “this backstop is not meant to be used” and, “our objective remains to reach a new agreement between the EU and the UK before the end of the transition.”<sup>49</sup> The Secretary of State told us a number of reasons why the EU would be “uncomfortable” with the activation of the backstop. He said:

I alluded earlier to whether the EU 27 would be comfortable with losing all access to our coastal waters on day 1 of a backstop. I do not think they would. That would be difficult politically. Would they be comfortable with businesses having access to the single market without the vast sums that you and I campaigned against and without the freedom of movement? I do not think they would. Would they be comfortable with the litigation risk of firms claiming a trade distortion? Would they be comfortable with the potential disruption to their own future free trade agreements, as they tried to calculate them without clarity on the population size for those free trade agreements?<sup>50</sup>

34. If the backstop is activated, the Withdrawal Agreement states explicitly that it is “intended to apply only temporarily.”<sup>51</sup> Nevertheless, the backstop can only be replaced with other arrangements if both sides, in the Joint Committee, agree that it is no longer

---

46 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Protocol on Ireland/Northern Ireland, article 6(1)

47 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Protocol on Ireland/Northern Ireland, article 6(2)

48 [Q3312](#)

49 European Commission, [Statement by Michel Barnier](#), 14 November 2018

50 [Q3368](#)

51 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Protocol on Ireland/Northern Ireland, article 1(4)

necessary.<sup>52</sup> If the two sides cannot reach agreement, the backstop will remain in force. The Attorney General confirmed in the House of Commons in his oral statement on 3 December 2018 that the UK cannot unilaterally withdraw from the backstop and that it could become indefinite. Asked whether there was anything to prevent the protocol from becoming permanent in the event of no agreement, the Attorney General said, “as a matter of international law, no there is not—it would endure indefinitely, pending a future agreement being arranged”.<sup>53</sup>

**35. The backstop derives from the Joint Declaration agreed by the UK and the EU in December 2017 which set out three mechanisms for avoiding a hard border between Northern Ireland and Ireland. It has been negotiated to ensure that in all circumstances the border between Northern Ireland and Ireland remains as it is now with no checks and no infrastructure. The backstop would involve an EU-UK Single Customs Territory including provisions to ensure a level playing field between the EU and the UK. Northern Ireland would be bound by the full EU Customs Code. This would be the default relationship between the UK and the European Union after the end of the transition/implementation period, unless and until a future economic relationship is agreed that can maintain an open Ireland/Northern Ireland border and protect all parts of the Belfast (Good Friday) Agreement. The proposals put forward so far by the Government to maintain in future both frictionless trade and an open border on the island of Ireland, the ‘Chequers proposals’, have previously been rejected by the European Union as unacceptable.**

**36. In December 2017, we said that we did not see how it would be possible to reconcile maintaining an open border on the island of Ireland with leaving the Single Market and Customs Union, which would inevitably make the Northern Irish border the UK’s customs and regulatory border with the European Union. Since then, we have seen no realistic, long-term proposals from the Government that would address this.**

**37. The agreement on a UK-wide backstop is in line with the commitment made in the December 2017 Joint Report to ensure “the same unfettered access for Northern Ireland’s businesses to the whole of the United Kingdom internal market.” Nevertheless, the fact that there will be greater adherence to single market rules in Northern Ireland under the backstop compared to the rest of the UK means that some checks will be necessary for certain goods moving from Great Britain to Northern Ireland, although the UK will have the power not to apply checks on goods travelling in the other direction. We also note that some checks already exist for goods crossing the Irish Sea and both sides have agreed that any additional checks should be conducted in the least intrusive way possible.**

**38. The backstop Protocol in the Withdrawal Agreement means that a Northern-Ireland only backstop would effectively remain in place as the ultimate fall-back, should both sides agree to terminate the EU-UK Single Customs Territory. Should the UK decide to leave the Single Customs Territory and seek to negotiate a trade agreement with another country during the operation of the backstop or if the UK were to negotiate a looser CETA-style free trade agreement with the EU after the end**

52 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Protocol on Ireland/Northern Ireland, article 20

53 HC Debate 3 December 2018, Vol. 650, [Col. 553](#)

**of the transition/implementation period, neither agreement would include Northern Ireland and both would result in more checks between Northern Ireland and the rest of the UK. As we noted in our September 2018 report, a CETA-style agreement with the EU would not, on its own, ensure the type of friction-free trade with the EU that many UK companies with just-in-time supply chains need. We do not consider this to be a viable option. The commitment to avoiding a hard border enshrined in the Withdrawal Agreement will continue to shape the future relationship between the UK and the EU because it will not be possible for the UK to decide on customs and regulatory arrangements which negate that commitment.**

### ***Review clause: transition/implementation or the backstop?***

39. We heard evidence that the 21-month transition/implementation period would probably not be enough time to negotiate the future EU-UK relationship. Agata Gostynska-Jakubowska, Senior Research Fellow at the Centre for European Reform, said, “My sense is that it would be a tall order to negotiate the future relationship in 20 months. It is rather unlikely... and it involves over 30 stages from getting Council’s authorisation to entering into force.”<sup>54</sup> Dr Hestermeyer described the possibility of negotiating the future relationship during the 21-month transition period as a “pipedream”. He said that within an extended transition/implementation period, “it is still tough, but my hope is that it would be possible to get at least the main things done.”<sup>55</sup> However, Professor Dehousse, a former Judge at the General Court of the European Union, suggested that it might be possible to finalise the future relationship in time, but only in certain circumstances: “It is a huge endeavour, but sometimes the machine can go quickly if both partners clearly know what they want.”<sup>56</sup>

40. The Withdrawal Agreement allows the Government to choose between two options, if more than the 21-month transition/implementation period is needed to agree, ratify and implement the future EU-UK relationship:

- i) The UK may request an extension to the transition/implementation period. It can be extended once, for either one or two years. A request for an extension must be made before 1 July 2020; or
- ii) The Government can choose to activate the backstop.<sup>57</sup>

We note the provisions allowing for an extension to the transition/implementation period, which we called for in our March 2018 Report.<sup>58</sup> However, we also noted the extent to which the UK would be a rule taker from the EU in such circumstances. We said:

During a prolonged transition/implementation period, the UK would be bound by the full *acquis*, with no say in the Union’s decision-making bodies. It would also be bound by the CJEU without a UK Judge on the Court.

---

54 [Q3306](#)

55 [Q3306](#)

56 [Q3308](#)

57 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Article 134 & Protocol on Ireland/Northern Ireland, Article 3 6(1)

58 Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal: December 2017 to March 2018](#), Third Report of Session 2017–19, HC 884, 18 March 2018, para. 87

Furthermore, it would have to make financial contributions to the EU's new seven-year budget, with no say on how it is to be spent. The UK would also be subject to new EU laws over which it had not had voting rights.<sup>59</sup>

41. On 26 November 2018, the Prime Minister said, "free movement would almost certainly be required to continue in the event of an extended implementation period."<sup>60</sup> The UK would also remain subject to the Common Agricultural Policy and the Common Fisheries Policy.

42. The Withdrawal Agreement states that an appropriate financial contribution would be calculated for the extended transition/implementation period, before 1 July 2020, by the Joint Committee established under the Withdrawal Agreement,<sup>61</sup> subject to the dispute resolution mechanism.

43. The Prime Minister said that the UK would not be required to make a financial contribution to the EU under the backstop; nor would the UK be subject to rules on free movement of people. However, as we set out above, while the Single Customs Territory would obviate the need for tariffs, quotas and checks on rules of origin between the EU and the UK, without other arrangements there would still be barriers to trade in goods and services, whereas there would be no such barriers under an extended transition/implementation period.<sup>62</sup> Oliver Robbins told us, "it is certainly true that, if the UK were to enter into an extension to the implementation period, some of the other negative consequences of being in the backstop... referred to at the beginning would not apply."<sup>63</sup>

44. It is clear that if more time is needed to negotiate or implement the future relationship by 1 July 2020, the Government will need a clear idea of how to use the final months of the transition/implementation period to prepare citizens, businesses and institutions for the effects of either extending the transition/implementation period or activating the backstop. Professor Dehousse told us "... it will not be a cliff edge in July [2020]. There will need to be a clear perspective, if you do not have the extension, of how to use the remaining time."<sup>64</sup>

**45. We note the extension clause for the transition/implementation period, which we called for in March 2018. While we agree with the Government that the best outcome would be to conclude the agreement, ratification and implementation of the future relationship before the end of 2020, this timeframe is likely to be unrealistic. Negotiations on withdrawal issues have lasted 18 months. The future relationship negotiations will have to cover a far wider range of issues, including trade in goods and services, foreign policy coordination, policing and information sharing, participation in EU agencies, agriculture, fisheries, data, labour mobility and the recognition of professional qualifications, broadcasting, intellectual property, public procurement, consumer safety, aviation, freight, energy, medicines, and scientific co-operation.**

59 Exiting the European Union Committee, [The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018](#), Third Report of Session 2017–19, HC 884, 18 March 2018, para. 88

60 HC Deb 26 November 2018, Vol. 650, [Col. 56](#)

61 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Article 132(3)

62 See paras. 29 and 30 of this report

63 [Q3366](#)

64 [Q3308](#)

Furthermore, the future relationship negotiations will be interrupted in 2019 by the European Parliament elections and the appointment of a new European Commission. The negotiations will be further complicated and could take significantly longer because the Government has still not yet set out clear objectives for the future relationship that are realistic, workable and have the support of Parliament. In addition, each of the 27 individual EU Member States, their national and, where applicable, regional Parliaments, will be able to exercise a veto on the overall outcome.

46. The review clause in the Withdrawal Agreement gives the Government a choice of whether to extend the transition/implementation period or to activate the backstop, if more time is needed to negotiate, ratify or implement the future relationship. The Government will have to decide whether either of these options are necessary by 1 July 2020. Both choices come with costs. An extension to the transition/implementation period would mean the UK making additional payments to the EU at a level as yet undetermined, and, with no say in EU decision-making, remaining a rule taker at least for a further one or two years. Alternatively, activating the backstop would result in immediate barriers to UK-EU trade in goods and services. As a result, the UK faces a pivotal choice in July 2020 if the future EU-UK relationship is not in place, and a further cliff edge either one or two years later if the transition/implementation period is extended. At any of these points, the UK could face the threat of significant economic disruption that would reduce its leverage in the negotiations, the longer that they continue. The Withdrawal Agreement and the Political Declaration therefore do not provide certainty.

## Financial settlement

47. On 24 January 2018, the Chancellor of the Exchequer wrote to the Treasury Select Committee setting out a ‘reasonable central estimate’ of the Financial Settlement as between £35 billion and £39 billion.<sup>65</sup> The Government has said that payment is conditional on there being an agreement on the future relationship that is acceptable to the UK. On 12 July 2018, the then Secretary of State for Exiting the European Union told the House, “I would like to make one thing very clear: we will not sign away our negotiating leverage or spend taxpayers’ money in return for nothing.” He went on to say:

There should be a firm commitment in the withdrawal agreement requiring the framework for the future relationship to be translated into legal text as soon as possible. Of course, if one party fails to honour its side of the overall bargain, there will be consequences for the whole deal.<sup>66</sup>

48. On 28 June 2018, we published a report on the parliamentary approval of the Withdrawal Agreement, which concluded that if the Government “wishes to make the payment of the financial settlement conditional on reaching a binding agreement on the future relationship, it would need to secure the agreement of the EU27 to inserting text to this effect in the Withdrawal Agreement.”<sup>67</sup> We also called on the Government “to seek the inclusion of the Political Declaration as an annex to the Withdrawal Agreement in

65 Treasury Select Committee, [Correspondence from the Chancellor of the Exchequer relating to the UK’s EU Withdrawal financial settlement, dated 24 January](#), published 12 April 2018

66 HC Deb 12 July 2018, Vol. 644, Col. 1158

67 Exiting the European Union Committee, [Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship](#), Sixth Report of Session 2017–19, HC 1240, 28 June 2018, para 64

order to give its contents greater force.” In our September 2018 Report on the progress of the negotiations, we also recommended that “reaching a Withdrawal Agreement must be linked to obtaining a satisfactory Political Declaration on the framework for future EU-UK relations” and called on the Government “to include any such link, if agreed, in the Withdrawal Agreement and Implementation Bill.”<sup>68</sup>

49. The Withdrawal Agreement does not link its provisions, including the payment of the Financial Settlement, to a “satisfactory Political Declaration” as we recommended. However, it does include Article 184, that states:

The Union and the United Kingdom shall use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the Political Declaration of 25/11/2018 and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period.<sup>69</sup>

Oliver Robbins emphasised this Article in his evidence to us on 3 December, noting that it was “unprecedented” for a non-binding document such as the Political Declaration to be referred to in a legally binding treaty and that it placed a clear obligation on both sides to negotiate in good faith.<sup>70</sup>

50. This provision is reinforced by a duty of sincere cooperation requiring each side to “in full mutual respect and good faith, assist each other in carrying out tasks which flow from [the Withdrawal Agreement.]”<sup>71</sup> However, these articles do not allow the Government to cease payments of the Financial Settlement. On 26 November 2018, the Prime Minister told the House of Commons, “I think it would be wrong for this House to believe that, on leaving, the United Kingdom will have no legal obligations to pay money to the European Union. There are legal obligations to pay money to the European Union, and I think it is important that we abide by those obligations.”<sup>72</sup>

**51. The UK’s agreement to the financial settlement will be legally binding under international law once the Withdrawal Agreement has been ratified. We recommended previously that, if the Government wished to make the payment of the financial settlement conditional on reaching a binding agreement on the future relationship, it would need to secure the agreement of the EU27 to include text to this effect in the Withdrawal Agreement. This provision is not contained explicitly in the final Withdrawal Agreement, despite assurances from previous Secretaries of State that they would seek to include such a clause. We note that Article 184 of the Withdrawal**

---

68 Exiting the European Union Committee, [The progress of the UK’s negotiations on EU withdrawal \(June to September 2018\)](#), Ninth Report of Session 2017–19, HC 1554, 18 September 2018, para 66

69 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Article 184

70 [Q3365](#)

71 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Article 5

72 HC Deb 26 November 2018, Vol. 650, [Col. 56](#)

**Agreement commits both sides to negotiate the future relationship in good faith, but this does not guarantee that the next phase of negotiations will lead to a successful outcome. We do not conclude that Article 184 of the Withdrawal Agreement represents the kind of conditionality that would allow the UK to suspend payments under the financial settlement once these have been agreed in the Withdrawal Agreement.**

52. **The Government has estimated that the Financial Settlement will cost between £35 billion and £39 billion. Since that estimate was made, the Government has agreed that the transition/implementation period can be extended for either one or two years. Before Parliament votes on whether to approve the Withdrawal Agreement and Political Declaration, the Government should set out its estimates of possible UK liabilities that would arise if the transition/implementation period is extended. It should also make clear whether the money the UK owed under international law would be different in the event of a no deal outcome and provide a breakdown of relevant comparable liabilities and costs for each scenario.**

## **Governance and dispute resolution**

53. One of the last issues to be agreed in the Article 50 negotiations was the structure for the governance of the Withdrawal Agreement. Governance refers to the process of managing and supervising the provisions of the Withdrawal Agreement. Negotiators also had to devise a mutually acceptable process for resolving disputes should one party to the Withdrawal Agreement disagree with the other's interpretation of their obligations. Mechanisms also had to be agreed for enforcing the results of the dispute resolution process.

54. These areas were controversial. The European Commission proposed that disputes that cannot be resolved politically should be settled by the CJEU at the request of either party. It also proposed that the CJEU would be able to enforce disputes with a power to impose penalty payments. While the Government acknowledged that the CJEU is the ultimate arbiter of EU law within the European Union, it previously rejected the suggestion that the CJEU must therefore be given the power to enforce and interpret international agreements between the European Union and third countries.

55. In previous reports we expressed concern over the continued role of the CJEU over the governance of the Withdrawal Agreement, although we have acknowledged that the EU will wish to preserve the autonomy of the CJEU to interpret EU law.<sup>73</sup> In our May 2018 report on the progress of the negotiations we agreed with the Government that “the CJEU should not be the final arbiter after the transition/implementation period is concluded” but we acknowledged that “dispute resolution [cannot] be left to the Joint Committee for technical and political arbitration alone” and that the “only acceptable solution is a final arbiter whose composition is balanced between representatives from the UK and the EU's institutions.”<sup>74</sup>

56. In the Withdrawal Agreement, both sides agreed to give the CJEU jurisdiction over the UK, as currently provided for in the EU Treaties, during the transition/implementation

73 Exiting the European Union Committee, [The progress of the UK's negotiations on EU withdrawal \(June to September 2018\)](#), Ninth Report of Session 2017–19, HC 1554, 18 September 2018, para 66

74 Exiting the European Union Committee, [The progress of the UK's negotiations on EU withdrawal \(March to May 2018\)](#), HC 1060, 24 May 2018, para. 34

period.<sup>75</sup> The Withdrawal Agreement then provides for the establishment of a Joint Committee once the UK has left the EU, co-chaired by the UK and the EU, which will be responsible for the implementation and application of the Withdrawal Agreement itself. The Joint Committee will have the power to adopt decisions which will be binding on the EU and the UK. All decisions by the Joint Committee will be made by mutual consent.<sup>76</sup>

57. In the event of a dispute on the interpretation of the Withdrawal Agreement, the Joint Committee will undertake an initial political consultation. If no solution is found, either party can refer the dispute to an arbitration panel, whose decision is binding. In cases where the dispute involves a question of EU law, the arbitration panel has an obligation to refer the question to the CJEU for a ruling, which the arbitration panel will have to follow. Article 174 of the Withdrawal Agreement says, “Where a dispute... raises a question of interpretation of a concept of Union law... the arbitration panel shall not decide on any such question. In such cases, it shall request the Court of Justice of the European Union to give a ruling on the question. The Court of Justice of the European Union shall have jurisdiction to give such a ruling which shall be binding on the arbitration panel.” In addition, either party can ask the arbitration panel to refer a question to the CJEU, which it must do, unless the arbitration panel considers that the dispute does not, in fact, touch on EU law. The arbitration panel must provide the reasons for its assessment and either of the two sides can ask for a review.

58. The decisions of the arbitration panel will be binding on both the EU and the UK and, in cases of non-compliance, the arbitration panel can impose a lump sum or penalty payment to be paid to the aggrieved party. Finally, if compliance is still not restored, the Withdrawal Agreement allows either side to suspend, proportionately, the application of the Withdrawal Agreement itself, although there are exceptions, such as for the Citizens’ Rights Part of the Agreement. Any suspensions would be subject to review by the arbitration panel.<sup>77</sup>

59. Dr Hestermeyer told us that the role of the CJEU as the sole interpreter of EU law and its ability to issue rulings that were binding on the arbitration panel was “inescapable for the level of integration we want under the current case law of the Court of Justice.” However, he said that the mechanism contained some room for flexibility in interpretation:

The idea is, if the Court of Justice only decides the matter of EU law, there is still the flexibility to render the final decision for the national courts or, in this case, the arbitration panel. Trust me, judges find ways of saying, “This is what the EU law says and this is what the non-EU law says, and so we come to the decision we wanted anyway”. There are limits to that, but

---

75 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Protocol on Ireland/Northern Ireland, article 128

76 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Article 164

77 Department for Exiting the European Union, [Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018](#), 25 November 2018, Articles 167–181

the EU law matter will be decided authoritatively by the Court of Justice, although there is still the freedom for the arbitration panel to decide on other matters.<sup>78</sup>

Professor Dehousse agreed and said “some EU Member States or institutions are not fully happy about this... In the end, there is some power of autonomy in this panel, which is important.”<sup>79</sup>

**60. We welcome the pragmatic agreement on the governance arrangements for the Withdrawal Agreement. It ensures that neither the EU nor the UK is bound by the other jurisdiction’s courts, which in previous reports we said would be unacceptable, and the two sides have agreed to use independent arbitration to resolve relevant disputes that cannot be resolved in the Joint Committee. However, we note that any matters of EU law must be referred to the CJEU. In these cases, its interpretation of the EU’s rules will ultimately prevail and the CJEU will therefore have an ongoing role in overseeing the Withdrawal Agreement, including after the end of the transition/implementation period.**

---

78 [Q3276](#)

79 [Q3276](#)

## 3 The Political Declaration on the Framework for the Future Relationship

### Political Declaration

61. Throughout our scrutiny of the Article 50 negotiations, we were assured by the two previous Secretaries of State for Exiting the European Union that the Political Declaration on the framework for the future relationship would be “detailed” and “substantive”.<sup>80</sup> On 25 April 2018, the Rt Hon. David Davis MP<sup>81</sup> told us:

It has to be substantive from the British Parliament’s point of view. The British Parliament, when voting for the withdrawal agreement, will be voting for a bill of £35 billion to £39 billion. It will want to know, on the other side, what we are getting in exchange.<sup>82</sup>

On 24 July 2018, the Rt Hon. Dominic Raab MP also told us that he expected that “the Political Declaration would be a substantive document”.<sup>83</sup>

62. In our April 2018 Report on the future EU-UK relationship, we set out a series of tests by which we would judge the Political Declaration. They covered the future EU-UK relationships on the economy and security and foreign policy relationships, as well as participation in EU programmes and agencies. In this chapter we examine whether these tests have been met.<sup>84</sup>

### Future EU-UK economic relationship

#### Trade in goods

63. We set the following tests for trade with the EU:

- In respect of trade in goods, there must be no tariffs on trade between the UK and the EU27;
- Trade in goods must continue to be conducted with no additional border or rules of origin checks that would delay the delivery of perishable or time-sensitive deliveries or impede the operation of cross-border supply chains;
- There must be no additional costs to businesses that trade in goods or services;
- The UK must seek to maintain convergence with EU regulations in all relevant areas in order to maximise access to European markets;

80 Our first test was: “The border between the Republic of Ireland and Northern Ireland must remain open, with no physical infrastructure or any related checks and controls, as agreed in the Phase 1 Withdrawal Agreement”. We considered the Withdrawal Agreement’s backstop Protocol in the previous chapter

81 The Rt Hon. David Davis MP was Secretary of State for Exiting the European Union between 13 July 2016 and 8 July 2018. Upon his resignation, he was replaced by the Rt Hon. Dominic Raab MP. Mr Raab resigned on 15 November 2018 and was replaced by Rt Hon. Stephen Barclay MP

82 [Q1444](#)

83 [Q2474](#)

84 Exiting the European Union Committee, [The future UK-EU relationship](#), Fourth Report of Session 2017–19, HC 935, 4 April 2018, para 181

- The UK Government must ensure maximum access to European markets while agreeing reciprocal access to waters and a fairer allocation of fishing opportunities for the UK fishing industry.

64. The Political Declaration states that the future relationship should be based on a free trade area, which “should ensure no tariffs, fees, charges or quantitative restrictions across all sectors”.<sup>85</sup> It also states that there is an objective to agree customs arrangements that “build and improve on the single customs territory provided for in the Withdrawal Agreement”, which would remove the need for rules of origin checks.<sup>86</sup>

65. We noted in our September 2018 Report that regulatory checks are more onerous than customs checks. The Political Declaration includes an ambition to avoid “unnecessary” barriers to EU-UK trade, along with Technical Barriers to Trade, which encompass product regulations and SPS measures.<sup>87</sup> The Political Declaration states that the UK “will consider aligning with Union rules in relevant areas”.<sup>88</sup> However, the level of this alignment is not set out and there is another specified ambition for both sides “to preserve regulatory autonomy”.

66. There are references to the Government’s intention to establish an independent trade policy. The level of independence that is envisaged is left unspecified. If the Government seeks the freedom to strike ambitious free trade agreements with other countries that include goods, more checks would be required on goods that move between the UK and the EU.

67. There is no detail on what fishing arrangements will exist between the UK and EU Member States after the transition/implementation period. Both sides have agreed to use their best endeavours to reach an agreement before 1 July 2020.<sup>89</sup>

68. In short, many of the details of the UK’s future trading arrangements for goods are left open, to be decided during the next phase of negotiations. This is illustrated by a paragraph under the heading “Implications for checks and controls”, which states:

The Parties envisage that the extent of the United Kingdom’s commitments on customs and regulatory cooperation, including with regard to alignment of rules, would be taken into account in the application of related checks and controls, considering this as a factor in reducing risk. This, combined with the use of all available facilitative arrangements as described above, can lead to a spectrum of different outcomes for administrative processes as well as checks and controls, and note in this context their wish to be as ambitious as possible, while respecting the integrity of their respective markets and legal orders.<sup>90</sup>

---

85 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 23

86 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 23

87 SPS measures relate to food safety and animal and plant health

88 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 25

89 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, paras. 73–76

90 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 28

69. If the future EU-UK economic relationship results in more checks and controls on goods, which based on the terms of the Political Declaration is possible, this will increase costs and bureaucracy for many UK businesses and would impact cross-border supply chains and the delivery of just-in-time and perishable goods.

### *Trade in services*

70. In respect of trade in services, we set the following tests:

- UK providers of financial and other services should be able to retain automatically, or with minimal additional administration, their rights of establishment in the EU, and vice versa, where possible on the basis of mutual recognition of regulatory standards;
- UK providers of financial and broadcasting services must be able to continue to sell their products into EU markets as at present;
- There must be no impediments to the free flow of data between the UK and the EU; and
- Any new immigration arrangements set up between the UK and the EU must not act as an impediment to the movement of workers providing services across borders or to the recognition of their qualifications and their right to practise.

71. The Financial Services Part of the Political Declaration sets out a relationship that would be based on equivalence agreements, to be agreed by June 2020. The EU's equivalency regime does not cover all financial services and access to the Single Market can be withdrawn with as little as 30 days' notice. However, there is a commitment to keep equivalency frameworks under review, and to be transparent and consult on decisions to adopt, suspend or withdrawal equivalency decisions.<sup>91</sup> The Secretary of State told us that this language set "quite a high aspiration, which has been agreed, as to what our relationship should be on financial services. That speaks to that 30-day concern."<sup>92</sup> There is no explicit reference to broadcasting.

72. The Declaration talks about enabling service providers to operate in a range of sectors across the EU and the UK, including "market access and national treatment under host state rules for the Parties' service providers and investors... treated in a non-discriminatory manner, including with regard to establishment."<sup>93</sup> The principle of national treatment implies that imported services and national services are treated equally. Nevertheless, UK services will have less freedom to trade across the EU than membership of the Single Market, where there is more freedom to operate across borders in many sectors.

73. On data, the Political Declaration states that the European Commission will start an assessment of data adequacy as soon as the UK leaves the EU, "endeavouring" to adopt a decision by end of 2020. Oliver Robbins told us that this commitment was "very unusual for the EU to have made, to make an assessment of us before we leave the transition period... certainty in this area is extremely important for a modern economy, and the political

91 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, paras. 37–39

92 Q3458

93 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 31

declaration moved us a lot further forward in that respect, because we are not subject to the vagaries of the adequacy process after we leave ...”<sup>94</sup> The Political Declaration also states that there should be appropriate cooperation between regulators.<sup>95</sup> As a Member State, the UK’s Information Commissioner sits on the European Data Protection Board (EDPB). Oliver Robbins confirmed to us that the Information Commissioner would not be on the EDPB after 29 March 2019, but that the UK wished to continue negotiating for the Information Commissioner to have an ongoing role with the EDPB in the future negotiations.

74. The extent to which the two sides will seek to recognise professional qualifications is unclear. The Political Declaration states only that “The Parties should also develop appropriate arrangements on those professional qualifications which are necessary to the pursuit of regulated professions, where in the Parties’ mutual interest.”<sup>96</sup> It does not state which professions will be included.

### UK participation in EU agencies and programmes

75. We set the following tests on continued participation in EU programmes and agencies:

- The UK must continue to participate in the Horizon 2020 programme, the Erasmus+ scheme, the Galileo project and in other space and research programmes in order to support the work of our world-class academic institutions and the importance of cultural and educational exchange between the UK and the EU 27;
- The UK must continue to participate in the European Medicines Agency, the European Aviation Safety Agency, the European Chemicals Agency and in other agencies where there is a benefit to continuing co-operation; and
- The UK must continue to participate in all relevant air safety agreements and the Open Skies Agreement to ensure no disruption to the existing level of direct flights.

76. The Political Declaration states that the UK aims to continue to participate in a range of EU programmes, including those that relate to “science and innovation, youth, culture and education, overseas development and external action, defence capabilities, civil protection and space.” However, any future participation in EU agencies and programmes would be subject to “terms and conditions” to be established and the “conditions set out in the corresponding EU legal instruments”.<sup>97</sup> The UK would also be required to make financial contributions.<sup>98</sup>

77. The Political Declaration also includes the “possibility of cooperation” between UK authorities and EU agencies, including the European Medicines Agency (EMA), the

---

94 [Q3454](#)

95 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 9

96 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 36

97 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para 24

98 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para 11

European Chemicals Agency (ECHA), and the European Aviation Safety Agency (EASA). The ambition to examine the “possibility of cooperation” appears to rule out continued participation in these agencies. These proposed arrangements will, in sector after sector, leave the UK with less influence and control over rules which govern key aspects of our economy than we enjoy today. The two sides also have an ambition to ensure passenger and cargo air connectivity through a Comprehensive Air Transport Agreement.

### **Government view**

78. We asked the Secretary of State for Exiting the EU and Oliver Robbins about several aspects of the Political Declaration, including trade in goods and services. Asked whether frictionless trade would be possible under the Political Declaration, Mr Robbins said that “the declaration makes clear that it is the ambition of both sides to achieve as frictionless a relationship as possible and that, at the extreme, frictionlessness is not ruled out by the spectrum of outcomes that is described in that declaration.”<sup>99</sup> He also said that the provisions setting up discussions on trade in services were more ambitious than in comparable free trade agreements.<sup>100</sup> He was confident that the Political Declaration would allow the UK to continue arguing for the positions set out in the July 2018 White Paper,<sup>101</sup> and emphasised that the document had rolled back some of the more “extravagant” demands expressed by the European Council in its March 2017 negotiating mandate.<sup>102</sup>

79. **We were told throughout our scrutiny of the negotiations by successive Secretaries of State for Exiting the European Union, and by Michel Barnier and other interlocutors from the European Union, that the Political Declaration would be detailed and substantive. We deeply regret that it is neither. The document only sets out a series of options for the UK’s trade with the European Union, its closest and largest trading partner, and establishes a framework for ongoing conversations across a range of areas. We note that the Political Declaration expresses a high level of ambition about the nature and scope of the future relationship, but ambition is no guarantee of success, nor is it clear how it would deliver at least the same outcomes as we have under our current relationship with the EU. People, businesses and institutions will therefore continue to face significant uncertainty about the future terms of EU-UK trade, which will affect future investment in the UK economy.**

80. **There is insufficient detail in the Political Declaration for us to judge whether our tests have been met, with the exception of the one relating to tariffs. What is clear from the Political Declaration is that our degree of market access to the European Union will be related to the degree to which we adhere to its rules. We welcome the fact that both sides have said there should be no tariffs or quotas. There is also an indication that burdensome rules of origin checks might be unnecessary, and there are measures which, if agreed, would facilitate trade in services and allow for the free exchange of data. However, outside the Single Market and Customs Union there cannot be frictionless trade. This will mean additional costs and bureaucracy for many UK businesses, however ambitious any future arrangement outside the Single Market and Customs Union may be. The Government needs to be frank and open about how far it is willing to align with EU rules, at the expense of UK regulatory autonomy, if**

---

99 [Q3349](#)

100 [Q3352](#)

101 [Q3349](#)

102 [Q3365](#)

**its main priority is to secure EU-UK trade that is as frictionless as possible. This is not a choice the Government has so far been willing to make. The Political Declaration makes clear, that because of the number of issues crucial to the future of the EU-UK relationship which are still to be decided, the Brexit process will not be concluded by March 2019. Indeed, negotiations on the future relationship are likely to go on for a number of years.**

### *Options for the future relationship*

81. On 4 April 2018, we published a report that examined the different types of EU-UK relationships that are possible.<sup>103</sup> It assessed the strengths and weaknesses of a range of existing models of EU relationships with third countries, including those with Canada, Norway, Switzerland, Ukraine and Turkey, along with a relationship based on trading with the EU on WTO terms. We said then “that there are trade-offs between the rights and obligations that comprise those relationships.”<sup>104</sup>

82. The Secretary of State told us that the Political Declaration keeps options for the future relationship open.<sup>105</sup> There are therefore a range of possible options that will need to be considered as the basis of the future negotiations if Parliament decides to approve the deal. These include options for a looser relationship with the European Union based on a Canada-style free trade agreement, a closer relationship which could be based on Norway’s relationship with the EU with a close customs arrangement (‘Norway plus’) or a more bespoke arrangement that is closer to the Government’s Chequers proposals, although we note that the EU has indicated that these would not be acceptable in their current form.<sup>106</sup> If Parliament does not approve the Withdrawal Agreement, there is also the possibility that has been referred to by the Prime Minister, which is that there might be another referendum to decide what should happen if Parliament is unable to agree a way forward.<sup>107</sup> This would require legislation and would inevitably involve asking the EU for an extension to Article 50. There is also the possibility of there being no deal.

83. On 28 November 2018, the Government published its economic analysis of EU exit. Four potential scenarios are compared against today’s arrangements, holding all other factors constant. These were a no deal scenario, an EEA-type scenario, an EU-UK FTA scenario and the Government’s Chequers proposals.<sup>108</sup> On 3 December 2018, Oliver Robbins told us that the Chequers proposals could still be the basis of the future economic relationship.<sup>109</sup> The Government’s analysis found that under all scenarios, the resulting

---

103 Exiting the European Union Committee, [The future UK-EU relationship](#), Fourth Report of Session 2017–19, HC 935, 4 April 2018

104 Exiting the European Union Committee, [The future UK-EU relationship](#), Fourth Report of Session 2017–19, HC 935, 4 April 2018, para 177

105 [Q3388](#)

106 [Q2537](#)

107 Liaison Committee, Oral evidence from the Prime Minister: Brexit, HC 1765, 29 November 2018, [Q4](#)

108 The Government’s Chequers proposals were comprised of two main parts, a ‘Facilitated Customs Arrangement’ (FCA) and a Common Rulebook for goods and agri-food. These proposals, according to the White Paper, would remove the need for customs processes between the UK and the EU and, taken with a proposed wider free trade area, it would preserve frictionless trade for the majority of UK goods trade. See, HM Government, [The Future Relationship between the United Kingdom and the European Union, 12 July 2018](#), para 15

109 [Q3364](#)

“higher barriers to UK-EU trade would be expected to result in greater economic costs.”<sup>110</sup> The table below sets out the impacts of GDP over a 15-year period, compared to what it would have been under current arrangements with the UK as an EU Member State.

Compared to today's arrangements (per cent change)		Modelled no deal	Modelled average FTA	Modelled EEA-type	Modelled White Paper	
					Modelled White Paper	Modelled White Paper with 50 per cent NTB sensitivity <sup>11</sup>
No change to migration arrangements	GDP	-7.7 (-9.0 to -6.3)	-4.9 (-6.4 to -3.4)	-1.4 (-2.4 to -0.9)	-0.6 (-1.3 to -0.1)	-2.1
	GDP per capita	-7.6 (-8.9 to -6.2)	-4.9 (-6.4 to -3.4)	-1.4 (-2.3 to -0.9)	-0.6 (-1.3 to -0.1)	-2.1
Zero net inflows of EEA workers	GDP	-9.3 (-10.7 to -8.0)	-6.7 (-8.1 to -5.1)	N/A <sup>12</sup>	-2.5 (-3.1 to -1.9)	-3.9
	GDP per capita	-8.1 (-9.5 to -6.8)	-5.4 (-6.9 to -3.9)	N/A	-1.2 (-1.9 to -0.7)	-2.7

Central estimates and ranges in brackets.<sup>13</sup>

Source: [EU Exit: Long-term economic analysis](#) November 2018

84. On 28 November 2018, the Bank of England also published an analysis of EU withdrawal scenarios.<sup>111</sup> The Bank found that in a disorderly, no deal EU exit, GDP would fall by 8% against its current forecast. The Bank also examined the impact on GDP from a future relationship that is either ‘close’ or ‘less close’ to the EU. If a close trading relationship is agreed, the economy could still be 1.25% smaller than if the UK had remained in the EU by 2023. If it is less close, the economy’s growth could be 3.75% less than if the UK had remained in the EU by 2023.

85. We note that the Government’s analysis of EU exit indicates that, over a 15-year period, the UK will be economically poorer under all possible scenarios than it would have been under current arrangements. The Government has also said that the Political Declaration allows for a “spectrum” of options. However, we note that the Government is seeking an economic relationship that would enable frictionless trade to continue. The Government must be honest that this will entail trade-offs, specifically, adhering to rules over which we no longer have a say, and will limit the number of options it has to choose from in the future relationship negotiations.

## Security and foreign policy

86. On future EU-UK security and foreign policy relationships, we set the following tests:

- In the fight against crime and terrorism, arrangements must replicate what currently exists in operational and practical cross-border co-operation. In

110 HM Government, [EU Exit Long-term economic analysis](#), 28 November 2018, page 5

111 Bank of England, [EU withdrawal scenarios and monetary and financial stability: A response to the House of Commons Treasury Committee](#), 28 November 2018

particular, the UK must retain involvement with Europol and the European Arrest Warrant and continue to participate in the EU's information-sharing systems including SIS II; and

- Institutional and decision-making frameworks must be identified to ensure that the UK is able fully to participate in foreign and security co-operation with the EU to meet the challenges it shares with its neighbours in the EU27.

87. The Political Declaration states that continued police and security cooperation will reflect the shared threats that the EU and the UK continue to face, while recognising “that the UK will be a third country outside of Schengen, to which the principle of free movement of people will not apply.”<sup>112</sup> This status will inevitably limit the extent of cooperation between the UK and the EU. It states that “the two sides will “work together to identify the terms for the United Kingdom’s cooperation via Europol and Eurojust.” Membership of Europol is limited to EU Member States,<sup>113</sup> although it cooperates with non-EU countries, either through ‘strategic agreements’, which provide for the exchange of general intelligence and strategic and technical information, or through ‘operational agreements’, which provide access to many Europol services and the ability to station liaison officers at the Europol headquarters.<sup>114</sup>

88. The Political Declaration appears to rule out continued UK participation in the European Arrest Warrant, which has speeded up and simplified the return of suspected offenders to the UK to face justice. The Warrant is linked to EU membership, including free movement of people, the Charter of Fundamental Rights and EU citizenship.<sup>115</sup> The Political Declaration states that the two sides will seek replacement extradition arrangements instead.<sup>116</sup>

89. There are references to continued access to EU information sharing systems, including reciprocal arrangements for exchanges of Passenger Name Record (PNR) data, and DNA, fingerprint and vehicle registration data, as contained in the Prüm Convention.<sup>117</sup> SIS II is not mentioned explicitly, although the desire to exchange information on “missing persons and objects” is, which is the purpose of SIS II.<sup>118</sup> The prospect of UK participation in legal sharing instruments is qualified with the statement that this would be delivered “so far as is technically and legally possible, and considered necessary and in both Parties’ interests, approximate to those enabled by relevant Union mechanisms.”<sup>119</sup>

90. The Declaration calls for continued close cooperation on foreign policy. The two sides aim to work together closely and in international organisations, in a way that is “flexible and scalable” and can be combined to the “greatest effect”, for example in times of crisis

112 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para 82

113 Excluding Denmark, which has a special relationship with the agency as a result of its JHA opt-out

114 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para 88

115 Commission, [Speech by Michel Barnier at the European Union Agency for Fundamental Rights](#), 19 June 2018

116 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 89

117 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 86

118 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para 87

119 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para 87

or in the event of “serious incidents”.<sup>120</sup> The UK can be invited to informal Ministerial meetings of the Member States of the Union “where appropriate” and at the discretion of the EU’s High Representative.<sup>121</sup> The two sides will also seek a high level of information exchange on sanctions and listings.<sup>122</sup>

91. **The Political Declaration includes objectives for the future EU-UK internal and external security relationships. These include the UK’s participation in cross-border data sharing agreements, continued cooperation with the EU’s law enforcement and criminal justice agencies and securing the UK’s place in Europe’s foreign policy and defence structures, as we judged would be essential in our key tests on future security and foreign policy cooperation. As the dispute over UK participation in Galileo has demonstrated, however, the depth of cooperation will, in many cases, depend on what the EU decides it wishes to allow under EU rules. It is imperative that negotiations on these issues are settled as early as possible. The overall level of EU-UK cooperation will be less than it is now, as will be the UK’s influence on the strategic direction of EU foreign and security policy.**

## Oversight of negotiations on the future relationship

### *The role of the House*

92. The Political Declaration on the framework for the future relationship therefore leaves open a range of options for the future relationship between the UK and the EU to discuss. If the House approves the Withdrawal Agreement, the Government will then introduce the European Union (Withdrawal Agreement) Bill to give the Agreement effect in UK law and complete the parliamentary conditions for ratification required by section 13 of the EU (Withdrawal) Act 2018. Consideration of the EU (Withdrawal Agreement) Bill will provide an opportunity for Parliament to consider its role during the negotiations which will turn the Framework on the Future Relationship into a treaty or treaties.

93. Dr Jack Simson Caird, Senior Research Fellow at the Bingham Centre for the Rule of Law, asked:

what does Parliament want its role to be in the negotiations on the future relationship?... Does it want to replicate for the future relationship the conditions in section 13 for the withdrawal agreement? Does it want to guarantee itself a veto at a particular moment in time, perhaps, before the European Parliament gets a chance to give its consent to the future relationship?

... This is the moment of maximum leverage for the House of Commons to say, “When we have left, we want to make sure we have at least a similar level of responsibility as the European Parliament has”.<sup>123</sup>

120 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para. 94

121 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para 97

122 Department for Exiting the European Union, [Political Declaration setting out the Framework for the Future Relationship between the European Union and the United Kingdom](#), 25 November 2018, para 100

123 [Q3198](#)

94. If section 13 of the EU (Withdrawal) Act set the parameters for Parliament’s role in approval of the Withdrawal Agreement, consideration of the EU (Withdrawal Agreement) Bill provides the opportunity to establish the framework for Parliament’s role in concluding the agreement on the future relationship.

**95. If the Withdrawal Agreement is approved, it is essential that Parliament has a central role in the scrutiny of the negotiations on the future relationship that take place after the UK has left the EU. Consideration of the legislation implementing the Withdrawal Agreement will provide an opportunity to set out the role that the House should have in agreeing a mandate for the Government for the future relationship negotiations; maintaining oversight of the progress and conduct of the negotiations; and ensuring that the House is given a meaningful and timely role in approving any agreements reached, including the circumstances in which the UK will opt to extend the implementation/transition period. This is a matter to which we will return in more detail.**

### *The role of the devolved administrations*

96. The role of the devolved administrations in informing both the proceedings of the Joint Committee charged with overseeing the implementation and application of the Withdrawal Agreement and the Government’s approach to negotiations on the future relationship is important. We have previously raised questions about the process for feeding in the views of the devolved administrations and parliaments into negotiations on the future relationship.<sup>124</sup> In response, the Government informed us that it had built on the work of the Joint Ministerial Council as the high level political forum for discussing the negotiations with the devolved administrations (and officials from the Northern Ireland Civil Service in the absence of a Northern Ireland Executive) and established a Ministerial Forum on EU Negotiations to enable the devolved administrations to “contribute to the development of the UK negotiating position on the future relationship in greater breadth and depth”.<sup>125</sup>

97. In our very first report of this Parliament, on the EU (Withdrawal) Bill, we noted that our predecessor Committee in the last Parliament had received evidence that the Joint Ministerial Council (EU Negotiations) had not been effective from the point of view of the devolved administrations. We concluded that “The future [intergovernmental] arrangements for the UK after leaving the EU will only be successful if they work for the whole of the UK”.<sup>126</sup>

98. Oliver Robbins noted that the Joint Committee envisaged by the Withdrawal Agreement will be a body representing both the EU and the UK Governments, adding that the structures of the Joint Ministerial Committee would be in place to ensure that the views of the devolved administrations were fed into the process.<sup>127</sup> The Secretary of

124 Exiting the European Union Committee, [Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship](#), Sixth Report of Session 2017–19 Report, HC 1240, 28 June 2018, para. 107

125 Exiting the European Union Committee, [Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship: Government Response to the Committee’s Sixth Report](#), Seventh Special Report of Session 2017–19, page 10; the Joint Ministerial Committee (EU Negotiations) is currently chaired by Rt Hon David Lidington MP, Chancellor of the Duchy of Lancaster; the Ministerial Forum on EU Negotiations is currently chaired by the Minister for the Constitution, Chloe Smith MP.

126 First Report, Session 2017–19, European Union (Withdrawal) Bill, HC 373, para. 78

127 [Q3449](#)

State acknowledged the importance of the perspective of the devolved administrations on certain matters, citing in particular the involvement of the Welsh Government in relation to trade between the Republic of Ireland and Holyhead.<sup>128</sup> He told us that he was “keen to build on the areas that have gone well in terms of cooperation with the devolved administrations”.<sup>129</sup>

**99. If the Withdrawal Agreement is approved by the House, negotiations on the future relationship between the UK and the EU will profoundly affect the devolved administrations. For the sake of the future of the United Kingdom, it is essential that the voices of the devolved administrations are heard. We have previously noted that intergovernmental arrangements will only work if they work for all the nations of the UK and have previously expressed concern at perceived shortcomings. We will continue to engage with our counterparts in the devolved assemblies to assess whether the arrangements made to ensure that the devolved administrations are able to inform the UK’s negotiating position during negotiations on the future relationship between the EU and the UK are effective.**

### **Select Committee scrutiny**

100. The UK’s exit from the EU on 29 March 2019 will not bring to an end Parliament’s role in close oversight of negotiations and of EU affairs. The European Scrutiny Committee has previously noted that “if the Withdrawal Agreement is implemented as described [in the draft published in March] it would require continued intensive scrutiny of EU Affairs by Parliament”.<sup>130</sup>

101. We have also previously noted that negotiations on the future relationship would be a “monumental task” and that it was not yet clear whether changes would be made to the machinery of Government to accomplish it.<sup>131</sup> We concluded that it was essential that a dedicated Select Committee was maintained to follow the progress of negotiations regardless of any changes in the machinery of Government.

were the Department for Exiting the European Union to be abolished and this Committee to lose its role, adding the scrutiny of these negotiations to the workload of another existing committee would not be adequate. To ensure the right level of scrutiny of these historic negotiations and an effective role for Parliament in seeking the best outcome for the UK, there must continue to be a dedicated select committee on EU exit during the transition / implementation period to scrutinise and hold the Government to account in negotiating the UK’s future relationship with the EU.<sup>132</sup>

102. In evidence to us on 3 December, the Secretary of State confirmed that he would retain ministerial responsibility for ongoing negotiations on the future relationship after the UK’s exit from the EU on 29 March 2019. However, he noted that

---

128 [Q3449](#)

129 [Q3450](#)

130 European Scrutiny Committee, [EU withdrawal: transitional provisions and dispute resolution](#), Nineteenth Report of Session 2017–19, HC 763, 20 March 2018, para 46

131 Exiting the European Union Committee, [Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship](#), Sixth Report of Session 2017–19 Report, HC 1240, 28 June 2018, para. 108.

132 Exiting the European Union Committee, [Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship](#), Sixth Report of Session 2017–19 Report, HC 1240, 28 June 2018, para. 108.

The structure of Whitehall is an issue that I am discussing with the Prime Minister and with colleagues across Whitehall because, as I am sure you will appreciate, as we move into phase 2, the governance structure will undoubtedly need to reflect a different approach. There will be a lot of different work streams and there is the mere fact that we will be outside the EU institutions, so the Prime Minister's own interaction outside of those institutions will change.<sup>133</sup>

**103. We reiterate our previous recommendation that in order to ensure appropriate scrutiny of the negotiations on the future relationship there must be a select committee dedicated to this task, regardless of any future changes in the machinery of Government.**

## 4 What happens next?

---

### Parliament's role in approving the deal

104. If no Withdrawal Agreement is agreed and ratified between the UK and the EU and no extension of the Article 50 process has been agreed, the UK will leave the EU without an agreement on the terms of its withdrawal on 29 March 2019. Section 13 (1) of the European Union (Withdrawal) Act 2018 sets out the Parliamentary processes that must be completed prior to ratification of the Withdrawal Agreement, namely the Withdrawal Agreement and the framework for the future relationship must be approved by a resolution of the House of Commons and an Act of Parliament must be passed providing for the implementation of the withdrawal agreement in domestic law (the EU (Withdrawal Agreement) Bill).

105. Broadly, there are three possible outcomes from the House's consideration of the motion to approve the Withdrawal Agreement and Political Declaration. The House could

- Approve the motion, in which case the Government would be expected to proceed with bringing the European Union (Withdrawal Agreement) Bill before Parliament;
- Approve the motion with amendments; or
- Reject the motion.

106. The House could agree an amendment to the motion to approve the Withdrawal Agreement and Political Declaration that made approval subject to certain procedural or other provisions. In his memorandum to the Procedure Committee, Rt Hon Dominic Raab MP, the then Secretary of State, suggested that amendments to the approval motion could have the effect of “inhibiting the Government’s legal ability to ratify the Withdrawal Agreement”,<sup>134</sup> implicitly opening it up to litigation for a failure to satisfy the requirements of Section 13(1) of the EU (Withdrawal) Act if it then proceeded to ratification.

107. However, others have argued that the extent of the risk to ratification of any amended approval motion would depend on the nature of the amendment.<sup>135</sup> An amendment that provided approval subject to changing the substance of the Withdrawal Agreement (for example relating to the financial settlement or provisions relating to the Northern Ireland backstop) could not be construed as approval of the deal. Whereas an amendment that made approval subject to procedural requirements that were within the gift of the Government to concede (such as provision for a “meaningful vote” on any agreement in respect of the future relationship), or that sought to provide a mandate for negotiations during the second stage, would be less likely to cause legal problems.

108. If the House were to reject the approval motion (or to pass an amended motion that was tantamount to rejection), a number of options would subsequently be open to it. In policy terms, the broad choices would be those set out above in paragraph 81–83. In procedural terms, Sir David Natzler, the Clerk of the House, made clear to us that

---

134 Procedure Committee, [Rt Hon. Dominic Raab MP memorandum](#)

135 UK Constitutional Law Association, [Robert Craig and Gavin Phillipson: could the meaningful vote end up in court?](#)

the House could consider the motion again, either following a change to the Withdrawal Agreement or Political Declaration agreed with the EU or, indeed, without such a change.<sup>136</sup> A rejection of the approval motion would not, therefore, lead irrevocably to no deal. However, under the terms of Section 13(1) of the EU (Withdrawal) Act, any motion to approve the Withdrawal Agreement and framework on the future relationship has to be moved by a Government Minister, so the initiative on any second attempt at approval lies with the Government.

109. Section 13 of the European Union (Withdrawal) Act 2018 places certain procedural requirements on the Government in the event that the House rejected the deal. A Minister would be required to make a written statement within 21 days of the vote setting out how the Government intends to proceed. Within seven sitting days of that point, a Minister must move a motion “in neutral terms”, to the effect that the House has considered the matter in the statement. The requirement for a debate in neutral terms would mean that the Speaker would be likely to regard the motion as falling within the terms of Standing Order 24B, and therefore no amendments could be tabled to it.

110. However, we have previously concluded that it is important that Parliament is able to express its view clearly in these circumstances and advise the Government on how to proceed, rather than simply “take note” of the situation.<sup>137</sup> Any debate on a motion in neutral terms will now allow for amendments as a result of the amendment to the Business Motion agreed by the House on 4 December 2018 which set aside Standing Order No. 24B. Any resolution subsequently agreed by the House would have considerable political weight.

**111. The decision of the House of Commons on whether to approve the Withdrawal Agreement and framework for the future relationship negotiated with the European Union will not simply reflect a binary choice between leaving the EU with the deal that has been negotiated or leaving without a deal. This “meaningful vote” will provide an opportunity for Parliament to express its view by potentially placing conditions on approval or giving reasons for rejection. In the event of a rejection, section 13 of the EU (Withdrawal) Act 2018 sets out requirements that the Government must make a statement within 21 days and, subsequently, schedule a debate on a motion in neutral terms, which will now be amendable.**

**112. Regardless of the procedures set out in section 13 of the EU (Withdrawal) Act, a range of options will remain open to the Government as to how to proceed in the event of the Withdrawal Agreement being rejected. These include bringing a motion to approve the deal, with or without further negotiation, back to the House. Only the Government is able to make this decision; it cannot be compelled by a resolution of the House to bring the approval motion back for further consideration. If the House of Commons does not approve a deal and if no agreement were made to extend the Article 50 process, the UK would leave the EU without a deal on 29 March 2019. However, there is probably no majority in Parliament for leaving with no deal and as Parliament has given itself the opportunity to consider and vote on other options, these may include the extension of Article 50.**

136 [Q3089](#)

137 Exiting the European Union Committee, [Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship](#), Sixth Report of Session 2017–19 Report, HC 1240, 28 June 2018, para. 46

## Formal minutes

---

**Wednesday 5 December 2018**

Members present:

Hilary Benn, in the Chair

Joanna Cherry	Seema Malhotra
Sir Christopher Chope	Mr Pat McFadden
Stephen Crabb	Mr Jacob Rees-Mogg
Mr Jonathan Djanogly	Emma Reynolds
Richard Graham	Stephen Timms
Peter Grant	Mr John Whittingdale
Wera Hobhouse	Hywel Williams
Stephen Kinnock	Sammy Wilson
Jeremy Lefroy	

Draft Report (*The progress of the UK's negotiations on EU withdrawal - The Withdrawal Agreement and Political Declaration*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 112 read and agreed to.

*Resolved*, That the Report be the Tenth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Wednesday 12 December at 10.00 am

## Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Wednesday 25 October 2017

Question number

**Rt Hon David Davis MP**, Secretary of State, Department for Exiting the European Union

[Q1–153](#)

### Wednesday 29 November 2017

**Peter Hardwick**, Head of Exports, Agriculture and Horticulture Development Board; **James Hookham**, Deputy Chief Executive, Freight Transport Association; **Sian Thomas**, Communications Manager, Fresh Produce Consortium; **Duncan Brock**, CIPS Group Director, Chartered Institute of Procurement and Supply

[Q154–188](#)

**Jon Thompson**, Chief Executive and Permanent Secretary, HM Revenue and Customs; **John Bourne**, Policy Director of Animal and Plant Health, Department for Environment, Food and Rural Affairs; **Richard Everitt**, Chairman, Port of Dover; **Richard Ballantyne**, Chief Executive, British Ports Association

[Q189–251](#)

### Wednesday 7 December 2017

**Simon York**, Director, HMRC Fraud Investigation Service; **Mike O'Grady**, Deputy Head, Organised Crime Operations North, HMRC Fraud Investigation Service; **Deputy Chief Constable Drew Harris**, PSNI; and **Assistant Chief Constable Stephen Martin**, Head of Crime Operations, PSNI

[Q252–301](#)

### Wednesday 13 December 2017

**Professor Alexander Türk**, Professor of Law, King's College London; **John Cassels**, Partner, Competition, Regulatory and Trade Law, Fieldfisher LLP; and **Dr Scott Steedman**, Director of Standards, BSI and Vice President (policy), International Standards Organisation

[Q302–324](#)

**Katherine Bennett**, Senior Vice President, Airbus UK; **Rod Ainsworth**, Director of Regulatory and Legal Strategy, Food Standards Agency; **Angela Hepworth**, Director of Corporate Policy and Regulation, EDF UK; and **Dr Ian Hudson**, Chief Executive, Medicines and Healthcare Products Regulatory Agency

[Q325–375](#)

### Wednesday 20 December 2017

**Professor Michael Dougan**, Professor of European Law and Jean Monnet Chair in EU Law, University of Liverpool; **Professor Anand Menon**, Director, UK in a Changing Europe; **Stephen Booth**, Director of Policy and Research, Open Europe

[Q376–454](#)

**Wednesday 10 January 2018**

**Professor Richard Whitman**, Head of School, Professor Politics and International Relations, University of Kent; **Fredrik Erixon**, Director, European Centre for International Political Economy; **Dr Stephen Woolcock**, Associate Professor in International Relations, London School of Economics

[Q455–545](#)**Wednesday 17 January 2018**

**Christophe Bondy**, Public International Lawyer at Cooley (UK) LLP and former senior counsel to Canada on the CETA negotiations; **Dr Lorand Bartels**, University of Cambridge and Senior Counsel, Linklaters; **William Swords**, President, UK-Canada Chamber of Commerce

[Q546–633](#)**Wednesday 18 January 2018**

**Professor Greg Hannon**, Director, Cancer Research UK Cambridge Institute; **Professor Eilís Ferran**, Pro-Vice Chancellor for Institutional International Relations, Cambridge University; **Dr Andy Williams**, Vice President Cambridge Strategy & Operations, AstraZeneca; and **Michael Lawrence**, Business Development Director, Deimos Space UK

[Q634–690](#)**Wednesday 24 January 2018**

**Rt Hon David Davis MP**, Secretary of State, Department for Exiting the European Union

[Q691–835](#)**Wednesday 31 January 2018**

**Dmytro Tupchiienko**, Data Protection Lawyer, EY, London; **Michael Emerson**, Associate Senior Research Fellow, Centre for European Policy Studies, Brussels; **Dr Tamara Kovziridze**, Co-founder, Reformatics, Tbilisi

[Q836–905](#)**Wednesday 6 February 2018**

**John Springford**, Deputy Director, Centre for European Reform; **Professor Clive Church**, Emeritus Professor of European Studies, University of Kent; and **Professor René Schwok**, University of Geneva

[Q906–964](#)**Wednesday 7 February 2018**

**Professor George Yarrow**, Chair of the Regulatory Policy Institute, Emeritus Fellow, Hertford College, Oxford, and visiting professor; **Ulf Sverdrup**, Director, Norwegian Institute of International Affairs; and **Professor Alla Pozdnakova**, Law Faculty, University of Oslo

[Q965–1022](#)

**Professor Carl Baudenbacher**, Judge of the EFTA Court

[Q1023–1048](#)

### Wednesday 21 February 2018

**Emanuel Adam**, Director of Policy and Trade, BritishAmerican Business; **Dr Peter Holmes**, Reader in Economics, University of Sussex; **Dr Pinar Artiran**, Assistant Professor, Bilgi University, Istanbul; **Sam Lowe**, Research Fellow, Centre for European Reforma

[Q1049–1100](#)

### Wednesday 27 February 2018

**Pascal Lamy**, former Director-General, World Trade Organization

[Q1101–1162](#)

### Tuesday 20 March 2018

**Dr Lars Karlsson**, President of KGH Border Services, former Director of World Customs Organisation, Deputy Director General of Swedish Customs

[Q1163–1197](#)

### Wednesday 21 March 2018

**David Campbell-Bannerman MEP**

[Q1198–1240](#)

**Jessica Gladstone**, Partner, Clifford Chance LLP; **David Henig**, UK Trade Policy Specialist

[Q1241–1284](#)

### Thursday 22 March 2018

**Iona Crawford**, Associate, Freshfields Bruckhaus Deringer LLP; **Sally Jones**, Director for International Trade Policy, Deloitte; **Mike Regnier**, Chief Executive, Yorkshire Building Society; and **Glynn Robinson**, Managing Director, BJSS

[Q1285–1310](#)

### Thursday 19 April 2018

**Andrew Bailey**, Chief Executive, Financial Conduct Authority, and **Sam Woods**, Deputy Governor Prudential Regulation, Bank of England

[Q1311–1339](#)

**Huw Evans**, Director General, Association of British Insurers, **Chris Cummings**, Chief Executive, the Investment Association, **Stephen Jones**, CEO of UK Finance, and **Nikhil Rathi**, CEO of London Stock Exchange Plc and Director of International Development

[Q1340–1377](#)

### Thursday 25 April 2018

**Rt Hon David Davis MP**, Secretary of State, Department for Exiting the European Union

[Q1378–1488](#)

**Wednesday 2 May 2018**

**Jill Barrett**, Visiting Reader, Queen Mary University Law School; **Sir Jonathan Faull**, former Director General, European Commission; **Agata Gostynska-Jakubowska**, Senior Research Fellow, Centre for European Reform; **Lord Lisvane**, former Clerk, House of Commons

[Q1489–1561](#)**Wednesday 9 May 2018**

**Giles Derrington**, Head of Policy: Brexit, International and Economics, techUK; **Elizabeth Denham**, Information Commissioner; **Stephen Hurley**, Head of Brexit Planning and Policy, British Telecom; **James Mullock**, Partner, Bird & Bird

[Q1562–1633](#)

**Dr Bleddyn Bowen**, University of Leicester; **Colin Paynter**, Managing Director, Airbus Defence and Space UK; **Patrick Norris**, Secretary of the European Affairs Group, UK Space

[Q1634–1692](#)**Wednesday 16 May 2018**

**Dr Sarah Main**, Executive Director, Campaign for Science and Engineering; **Dr Beth Thompson MBE**, Head of Policy (UK and EU), Wellcome Trust; **Professor Richard Brook OBE**, President, Association for Innovation, Research and Technology Organisations; **Professor Michael Arthur**, Chair, EU Advisory Group, Russell Group

[Q1693–1758](#)**Wednesday 23 May 2018**

**Suella Braverman MP**, Parliamentary Under-Secretary of State, Department for Exiting the European Union, and **Mr Robin Walker MP**, Parliamentary Under-Secretary of State, Department for Exiting the European Union

[Q1759–1908](#)**Wednesday 6 June 2018**

**Nicholas Hatton**, Co-Chair, the3million; **Anne-Laure Donskoy**, Co-Chair, the3million; **Barbara Drozdowicz**, Chief Executive Officer, East European Resource Centre; **Dr Mary Tilki**, Member and former Chair, Irish in Britain; **Catherine Hennessy**, Trustee, Irish in Britain

[Q1909–1954](#)

**Fiona Godfrey**, Chair, British Immigrants Living in Luxembourg, and Deputy Chair, British in Europe; **Jane Golding**, Co-Chair, British in Germany, and Chair, British in Europe; **Michael Harris**, Chair, EuroCitizens, Spain; **Kalba Meadows**, Founder, Remain in France Together

[Q1955–1996](#)**Wednesday 20 June 2018**

**Guy Verhofstadt MEP**, Brexit Co-ordinator and Chair of the Brexit Steering Group, European Parliament

[Q1997–2141](#)

### Wednesday 11 July 2018 AM

**Allie Renison**, Head of Europe and Trade Policy, Institute of Directors; **Henry Newman**, Director, Open Europe; and **Michael Dougan**, Professor of European Law and Jean Monnet Chair in EU Law, University of Liverpool

[Q2142–2200](#)

### Wednesday 11 July 2018 PM

**Rt Hon Caroline Nokes MP**, Minister of State for Immigration; **Simon Bond**, Strategy Director, Board of Immigration and Citizen System and Europe Director; and **Mark Doran**, Deputy Director, EU Exit Immigration Strategy

[Q2201–2309](#)

### Tuesday 24 July 2018 AM

**Huw Evans**, Director General, Association of British Insurers; **Catherine McGuinness**, Chair, Policy and Resources Committee, City of London Corporation; **Adam Minns**, Executive Director, Commercial Broadcasters Association; **Giles Derrington**, Head of Policy, Exiting the European Union, techUK.

[Q2310–2382](#)

### Tuesday 24 July 2018 PM

**Rt Hon. Dominic Raab MP**, Secretary of State for Exiting the European Union, and **Oliver Robbins**, Prime Minister’s Europe Advisor, Cabinet Office.

[Q2383–2536](#)

### Monday 3 September 2018

**Michel Barnier**, Chief Negotiator, European Commission, and **Sabine Weyand**, Deputy Chief Negotiator, European Commission.

[Q2537–2563](#)

### Tuesday 4 September 2018

**Philip Rycroft**, Head of UK Governance Group and Permanent Secretary, Department for Exiting the EU.

[Q2564–2685](#)

### Wednesday 10 October 2018 AM

**Sir Amyas Morse**, Comptroller and Auditor General and Head of the National Audit Office

[Q2686–2725](#)

**Jill Rutter**, Programme Director, Institute for Government; **Julian Jessop**, Chief Economist, Institute for Economic Affairs; **Sir Simon Fraser**, Deputy Chairman, Chatham House, and Adviser, Europe Programme, and former Permanent Secretary, Foreign and Commonwealth Office

[Q2726–2770](#)

**Wednesday 10 October 2018 PM**

**Andrew Opie**, Director of Food and Sustainability, British Retail Consortium; **Martin McTague**, Policy and Advocacy Chair, Federation of Small Businesses; **Richard Burnett**, Chief Executive, Road Haulage Association; **Mike Thompson**, Chief Executive, Association of the British Pharmaceutical Industry

[Q2771–2847](#)**Wednesday 17 October 2018**

**Jon Thompson**, Chief Executive and Permanent Secretary, HM Revenue and Customs; **Bernadette Kelly**, Permanent Secretary, Department for Transport; **Sir Chris Wormald**, Permanent Secretary, Department of Health; **Sir Ian Cheshire**, Government Lead Non-Executive Director, Cabinet Office

[Q2848–2983](#)**Wednesday 24 October 2018 AM**

**Dr Katy Hayward**, Reader in Sociology, Queen’s University Belfast; **Dr David Shiels**, Policy Analyst, Open Europe

[Q2984–3054](#)

**Aodhan Connolly**, Director, Northern Ireland Retail Consortium; **Seamus Leheny**, Policy Manager, Freight Transport Association; **Stephen Kelly**, Chief Executive, Manufacturing NI; **Declan Billington**, Vice-Chair, Northern Ireland Food and Drink Association

[Q3055–3088](#)**Wednesday 31 October 2018**

**David Natzler**, Clerk of the House

[Q3089–3156](#)

**Dr Jack Simson Caird**, Senior Research Fellow, Bingham Centre; **Raphael Hogarth**, Associate, Institute for Government; **Dr Sara Hagemann**, Associate Professor in European Politics, LSE; **Dr Simon Usherwood**, Reader in Politics, University of Surrey

[Q3157–3205](#)**Wednesday 14 November 2018**

**Nick Witney**, Senior Policy Fellow, European Council on Foreign Relations; **Georgina Wright**, Research Associate, Chatham House

[Q3206–3230](#)

**Camino Mortera-Martinez**, Senior Research Fellow, Centre for European Reform; **Sir Rob Wainwright**, former Executive Director, Europol

[Q3231–3263](#)**Wednesday 21 November 2018**

**Agata Gostynska-Jakubowska**, Senior Research Fellow, Centre for European Reform; **Professor Franklin Dehousse**, former Judge at the General Court of the European Union; **Dr Holger Hestermeyer**, Shell Reader in International Dispute Resolution, King’s College London

[Q3264–3329](#)

**Monday 3 December 2018**

**Rt Hon Stephen Barclay MP**, Secretary of State for Exiting the European Union and **Oliver Robbins**, Prime Minister's Europe Advisor

[Q3330-3476](#)

## Published written evidence

---

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

NEG numbers are generated by the evidence processing system and so may not be complete.

- 1 Association of British Insurers ([NEG0007](#))
- 2 British in Europe ([NEG0021](#))
- 3 British Retail Consortium ([NEG0010](#))
- 4 Dr Charlotte O'Brien ([NEG0008](#))
- 5 Finance & Leasing Association ([NEG0018](#))
- 6 Freight Transport Association ([NEG0004](#))
- 7 Freshfields Bruckhaus Deringer LLP ([NEG0019](#))
- 8 Investment Association ([NEG0009](#))
- 9 Irish in Britain ([NEG0026](#))
- 10 London First ([NEG0001](#))
- 11 London Market Group ([NEG0020](#))
- 12 Michael Emerson Centre for European Policy Studies (CEPS) ([NEG0012](#))
- 13 Port of Dover ([NEG0005](#))
- 14 Professor Carl Baudenbacher ([NEG0014](#))
- 15 Professor Graham Virgo, Pro-Vice-Chancellor University of Cambridge ([NEG0017](#))
- 16 Professor Michael Dougan, Liverpool Law School ([NEG0027](#))
- 17 Professor René Schwok, Global Studies Institute University of Geneva ([NEG0016](#))
- 18 Rail Delivery Group ([NEG0003](#))
- 19 Rob Dickinson ([NEG0013](#))
- 20 Stephen Woolcock LSE ([NEG0011](#))
- 21 the3million ([NEG0022](#))
- 22 the3million ([NEG0023](#))
- 23 the3million ([NEG0024](#))
- 24 the3million ([NEG0025](#))
- 25 TheCityUK ([NEG0002](#))

## List of Reports from the Committee during the current Parliament

---

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2017–19

First Report	European Union (Withdrawal) Bill	HC 373 (HC 771)
Second Report	The progress of the UK's negotiations on EU withdrawal	HC 372 (HC 862)
Third Report	The progress of the UK's negotiations on EU withdrawal: December 2017 to March 2018	HC 884 (HC 1077)
Fourth Report	The future UK-EU relationship	HC 935 (HC 1150)
Fifth Report	The progress of the UK's negotiations on EU withdrawal (March to May 2018)	HC 1060 (HC 1552)
Sixth Report	Parliamentary approval of the Withdrawal Agreement and the future relationship	HC 1240 (HC 1641)
Seventh Report	The progress of the UK's negotiations on EU withdrawal: Data	HC 1317 (HC 1564)
Eighth Report	The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizens	HC 1439
Ninth Report	The progress of the UK's negotiations EU withdrawal (June to September 2018)	HC 1554
First Special Report	European Union (Withdrawal) Bill: Government Response to the Committee's First Report	HC 771
Second Special Report	The progress of the UK's negotiations on EU withdrawal: Government response to the Committee's Second Report	HC 862
Third Special Report	The progress of the UK's negotiations on EU withdrawal (December 2017 to March 2018): Government response to the Committee's Third Report	HC 1077
Fourth Special Report	The future UK-EU relationship: Government Response to the Committee's Fourth Report	HC 1150
Fifth Special Report	The progress of the UK's negotiations on EU withdrawal (March to May 2018): Government Response to the Committee's Fifth Report	HC 1552
Sixth Special Report	The progress of the UK's negotiations on EU withdrawal: Data: Government Response to the Committee's Seventh Report	HC 1564

Seventh Special Report	Parliamentary scrutiny and approval of the Withdrawal Agreement and negotiations on a future relationship: Government Response to the Committee's Sixth Report	HC 1641
------------------------	--	---------